19963

TRANSCRIPT OF RECORD.

Vol. 1.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

603

WILLIAM S. TAYLOR AND JOHN MARSHALL,
PLAINTIFFS IN ERROR.

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 16, 1900.

17717

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Pleas before the Honorable, the Kentucky Court of Appeals, at the Capitol in the City of Frankfort, Kentucky, on the 6th day of April, A. D. 1900; Chief Justice James H. Hazelrigg, and Judges Thomas H. Paynter, A. R. Burnam, J. P. Hobson, B. L. D. Guffy, George DuRelle, and J. D. White, sitting:

WILLIAM S. TAYLOR
AND JOHN MARSHALL, ... *Appellants,*

vs.

J. C. W. BECKHAM, ... *Appellee.*

Be it remembered that heretofore, towit: on the 29th day of March, A. D. 1900, the appellants, William S. Taylor and John Marshall, filed in the Clerk's office of the Kentucky Court of Appeals, a Statement of Parties and a transcript of record in words and figures following, towit:

Court of Appeals of Kentucky.

WILLIAM S. TAYLOR,
JOHN MARSHALL, ... *Appellants,*

vs.

J. C. W. BECKHAM, ... *Appellee.*

STATEMENT.

The judgment appealed from herein was rendered on March 24, 1900, and is to be found on pages 70 and 73 of this Record. No Summons or Waiving Order is desired.

STATE OF KENTUCKY,
Jefferson County.

Pleas before the Hon. Emmet Field, Judge of the Jefferson Circuit Court, Common Pleas Division, at a Court held at the Court House in the City of Louisville.

WILLIAM S. TAYLOR
AND JOHN MARSHALL, ... *Appellants,*

against

J. C. W. BECKHAM, ... *Appellee.*

TRANSCRIPT OF RECORD.

Be it remembered that heretofore, towit; on the 24th day of February 1900, the plaintiff by counsel filed in the Clerk's office of the Court aforesaid a petition and six exhibits herein, which petition is follows, towit;

JEFFERSON CIRCUIT COURT.

J. C. W. Beckham, ... *Plaintiff,*

v.

William S. Taylor
and John Marshall, ... *Defendants.*

Petition Ordinary.

The plaintiff, J. C. W. Beckham, states that at the election held on the 7th day of November, 1899, in this Commonwealth, William Goebel was the Democratic candidate for the office of Governor, and this plaintiff was the Democratic candidate for the office of Lieutenant-Governor, and in like manner the defendants, William S. Taylor and John Marshall, were the Republican candidates for the office of Governor and Lieutenant-Governor, respectively, and the said Goebel, Taylor, Marshall and this plaintiff were voted for at said general election in November, 1899, for said offices; that

thereafter on the ——————————day of December, 1899, the State Board of Election Commissioners, whose duty it was to examine and canvass the returns from said election, assembled in the city of Frankfort, as required by law, and canvassed the said returns from said election, and determined, upon the face of said returns, that the defendant, William S. Taylor, was elected November 7, 1899, Governor of the Commonwealth of Kentucky, and John Marshall Lieutenant-Governor, for the term commencing December 12, 1899, and accordingly awarded to said Taylor and Marshall certificates showing said facts, and the said defendant, William S. Taylor was thereupon sworn and inducted into the office of Governor of the Commonwealth on the 12th day of December, 1899, and John Marshall was also sworn and inducted into the office of Lieutenant-Governor upon said day.

Plaintiff avers that the said William Goebel and this plaintiff were at the time said election was held more than thirty years of age respectively, were then and had been all their lives citizens of the United States and of the State of Kentucky, and plaintiff is yet such citizen, and that within thirty days after the said final action of said State Board of Election Commissioners in awarding certificates of election, as aforesaid, the said William Goebel, who had been a candidate for the office of Governor, and had been voted for at said election, gave notice to the defendant, William S. Taylor, in writing, signed by the said Goebel, that he would contest the election of the said Taylor to the office of Governor, upon numerous grounds which were therein set out at length, and claim and demand that he was duly elected Governor at said election, and in like manner and within the same time from the final action of said Board of Election Commissioners, this plaintiff gave to John Marshall a like notice, signed by himself, that he would contest the election of the said Marshall to the office of Lieutenant-Governor of the Commonwealth, and claim and demand that he was duly elected at such election to said office; that thereafter, on the third day after the organization of the General Assembly of this Commonwealth, the said William Goebel, as contestant for the office of Governor, and this plaintiff, as contestant for the office of Lieutenont-Governor, caused to be filed with both Houses of the General Assembly of the Commonwealth copies of the said notices of contest, duly executed, which had been given to the said William S. Taylor and John Marshall, respectively, and said notices were then and there entered at large upon the Journals of each House, and thereafter on said day, the Senate of Kentucky proceeded by lot to select, and did duly select by lot, three of its members to act as members of a Board of Contest for the trial of the contest for the office of Governor of this Commonwealth, inaugurated as aforesaid, and in like manner proceeded to select, and did select, by lot three of its members to act upon a Board of Contest for the trial of the contest for the office of

Lieutenant-Governor of this Commonwealth; and upon said day the House of Representatives of said General Assembly did, in like manner, select by lot eight of its member to act upon the Board of Contest for the trial of the contest for the office of Governor of this Commonwealth, and, in like manner, eight of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant-Governor of this Commonwealth; that upon said day the said members of the Contest Boards for the trial of the contests for the offices of Governor and Lieutenant-Governor of this Commonwealth were duly sworn as separate Boards by the Speaker of the House of Representatives to try separately the contested elections aforesaid, and in each case to give true judgment thereon, according to the evidence, unless dissolved before rendering judgment; that thereafter each of the said Boards, within twenty-four hours after its selection, met, appointed its chairman and assigned a day for the hearing of the contest before it then pending, and upon the day and at the time so fixed by each of said Boards, the contestants and contestees appeared, and contestees, William S. Taylor and John Marshall, before the respective Boards for the trial of their contests, each filed defense and counter-notices, and the evidence of said contestants and contestees was heard by said Boards from January 15, 1900 to January 29, 1900 inclusive, and on January 30, 1900, the said contests were submitted without argument for judgment, by consent, to said Boards separately, and the said Boards having duly considered the matters of law and facts involved in said contests did each separately decide the contest submitted to it, and made out in writing the decision of each Board; and on the —— day of January, 1900, each of said Boards reported its decision to each House of the General Assembly for its action thereon; that in the said contest for Governor, the said Board of Contest determined, adjudged and decided and so reported to each House of the General Assembly, that the said William Goebel, contestant for the office of Governor, as aforesaid, was duly elected Governor of this Commonwealth for the term beginning December 12, 1899, at the general election held on the 7th day of November, 1899, and that he had received the highest number of legal votes cast at said election, and was entitled to said office of Governor of this Commonwealth; that in like manner the said Board of Contest for the office of Lieutenant-Governor did decide, adjudge and determine, and so reported to each House of the General Assembly that the plaintiff, J. C. W. Beckham, contestant for the office of Lieutenant-Governor as aforesaid, was duly elected Lieutenant-Governor of the Commonwealth for the term beginning December 12, 1899, at the election held on the 7th day of November, 1899, and that he had received the highest number of legal votes cast thereat, and that he was entitled to the said office of Lieutenant-Governor for the said Term. Said decision or report made in the matter of the contest for Governor was

reduced to writing and signed by ten of the members of the said Board of Contest, who concurred in the finding. Said decision in the matter of the contest for the office of Lieutenant Governor, was, in like manner, reduced to writing, and signed by nine of the members of said Board of Contest who concyrred in the finding.

Said decisions and reports of the said Boards of Contest in the matter of the contest for Governor and Lieutenant Governor, as aforesaid, were thereafter adopted and approved, separately, by both Houses of the General Assembly, regularly and duly convened in Joint Assembly, at which there were present nineteen members of the Senate and fifty-six members of the House of Representatives, in all seventy-five members; and all of said members of said Houses present, as aforesaid, voted to adopt and approve, and said Houses did then and there adopt and approve, said reports of said Contest Boards separately, and then and there resolved, determined and adjudged that the same be approved, ratified and confirmed, and further by resolution then and there resolved, adjudged and determined that the said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky, at the general election on the 7th day of November, 1899, and that he had then and there received the highest number of legal votes cast at said election, and was entitled to the office of Governor of this Commonwealth for the term beginning the 12th day of December, 1899; that in like manner the said Houses of the General Assembly of the Commonwealth of Kentucky decided, adjuged and determined that the plaintiff, J. C. W. Beckham, was duly and legally elected Lieutenant Governor of the Commonwealth, and, as such, entitled to the office for the term beginning on the 12th day of December, 1899, and that he had received, at said election, the highest number of legal votes cast thereat; all of which determination, judgment and decision of both Houses of the General Assembly in Joint Assembly was entered upon the journals of each House thereof; that thereafter, in like manner, the Senate and House of Representatives duly and legally convened, each acting separately, duly considered and approved the said reports and findings of the said boards of Contest made to each House as aforesaid in the matter of the contest for the offices of Governor and Lieutenant-Governor, and each of said Houses of the General Assembly, the Senate by a vote of nineteen Senators and the House by a vote of fifty-six members, adjudged and determined, as the Joint Assembly had done, that William Goebel was duly and legally elected at the general election held on November 7, 1899, and entitled to the office of Governor for the term beginning December 12, 1899, and had received the highest number of legal votes cast at said election; and that each House of General Assembly did also, in like manner, separately adjudge, determine and decide that the plaintiff was duly elected to the office of Lieutenant-Governor at the said general election held on

November 7, 1899, and was entitled to said office for the term beginning December 13, 1899, and had received the highest number of legal votes cast at said election on November 7, 1899; which determination and decision of each of the Houses of the General Assembly was entered at large upon the Journals thereof.

The plaintiff now refers to and makes a part hereof the Journals of the House of Representatives and the Senate, the proceedings of the joint session of the General Assembly of the Commonwealth, evidencing the facts concerning the determination of the said contests aforesaid, and now files attested copies thereof as part of this petition.

Plaintiff further states that upon the adjudication and determination aforesaid by both Houses, of the General Assembly, that William Goebel was duly elected to and entitled to the office of Governor; all the powers and authority of the defendant, William S. Taylor, who had theretofore been acting as Governor of this Commonwealth, immediately ceased, and in like manner, upon the adjudication by both Houses of the General Assembly, that this plaintiff had been elected and was entitled to the office of Lieutenant-Governor, all the powers and authority of the defendant, John Marshall, who had been acting as Lieutenant-Governor of this Commonwealth immediately ceased; that immediately upon said adjudication the oath of office prescribed by the Constitution and laws of Kentucky to be taken by the Governor of this Commonwealth before he shall enter upon the discharge of his duties, was administered and taken by the said William Goebel on the ——————day of February, 1900, and he then and there assumed the said office of Governor and entered upon the discharge of the duties thereof, and very soon thereafter, to-wit, on the 3rd day of February, 1900, the said William Goebel died, and immediately, by operation of law, the plaintiff became entitled to be inducted into the office of Governor of this Commonwealth and to discharge the duties thereof, he having theretofore, to-wit, on the——————day of February, 1900, taken the oath prescribed by the Constitution and laws of Kentucky, and having been inducted into the office of Lieutenant-Governor before the death of the said William Goebel; that after the death of the said William Goebel on the 3rd day of February, 1900, the plaintiff, being entitled to and required by the Constitution and laws of this Commonwealth to discharge the duties of the office of Governor of this Commonwealth was immediately sworn, as required by the Constitution and laws of the State, and thereupon, at once, entered upon the discharge of the duties of said office of Governor of the Commonwealth, and ever since said time has been, and is yet discharging the duties of said office of Governor aforesaid.

Plaintiff further states that the defendant, William S. Taylor, the contestee and acting Governor, upon the 31st day of January, 1900, unlawfully took possession of the Capitol and public

buildings of the seat of government in the City of Frankfort, with an armed body of lawless men, and refused to allow the members of the General Assembly, or either House thereof, to meet separately, or in joint session in their respective chambers, in the Capitol of the Commonwealth, for the purpose of transacting the legislative business of the Commonwealth, and receiving and passing upon the reports of the Contest Boards in the matter of the contests for the offices of Governor and Lieutenant Governor, which were ready to be made to the General Assembly, upon said day. The General Assembly went to the Capital, upon said day, and then and there demanded entrance to the chambers in which its sessions have always been held, but it was met by an armed force of soldiers and lawless men, acting, unlawfully, under the orders of defendant, William D. Taylor, and denied admittance to the Senate Chamber or the Hall of the House of Representatives, and when the said General Assembly adjourned to and undertook to assemble at two other public places, in the city of Frankfort, he pursued them with a large body of armed men and forcibly and unlawfully prevented them from assembling upon said day, in the city of Frankfort, at either of said public places; and thereafter, from that time to the present, has retained possession and control of the Capitol buildings in the City of Frankfort, and excluded therefrom the Court of Appeals of Kentucky and the General Assembly; that upon January 31st, 1900, he unlawfully, wrongfully and corruptly assumed and pretended to adjourn the General Assembly from the City of Frankfort to the town of London, in Laurel County, and attempted to convene the General Assembly, at said place, for the corrupt and unlawful purpose of preventing said General Assembly from considering and acting upon the reports of said Contest Boards, all of which acts were done without the consent of and against the wishes of said General Assembly, and while they were in regular session, as provided by law, at the seat of Government; but notwithstanding these unlawful acts of the defendant, William S. Taylor, the plaintiff avers that both Houses of the General Assembly did meet, in regular joint session, and each House met separately, as heretofore alleged, in the city of Frankfort, and did receive, adopt and approve the said reports in the matter of the contests for the said offices of Governor and Lieutenant-Governor as heretofore alleged; but the plaintiff states that the defendant, William S. Taylor, notwithstanding the premises, still continued to prevent by force and arms the General Assembly from meeting in their respective chambers, in the Capitol, and still continued to keep and maintain a large body of lawless and desperate men, in control of said building, and thereby put the lives of the members of the General Assembly in peril; and thereupon the General Assembly adjourned on the———day of Gebruary, 1900, to the city of Louisville, where its sessions were regularly held, according to law, until the———day of Feb-

ruary, 1900, when it adjourned to the seat of government, and was permitted by the defendant, Taylor, to enter its chambers, and resume its lawful sessions therein.

The plaintiff avers that on the 19th day of February, 1900, the first day that the said General Assembly was allowed to convene in the Capitol, at the seat of Government, the Senate of Kentucky, lawfully and duly assembled in regular session adopted the following resolution, namely:

"Whereas, On the 31st day of January, 1900, the acting Gov-
"ernor of the Commonwealth of Kentucky, by the use of armed
"force, dispersed the General Assembly, and has until recently
"prevented the Senate and House from assembling at their regular
"rooms and places of meeting, and,

"Whereas, the General Assembly and each house thereof, after
"public notice, met in joint and separate sessions in the city of
"Frankfort, a full quorum of such bodies being present, and
"adopted the majority reports and resolutions of the Boards of
"Contest for Governor and Lieutenant-Governor of the Common-
"wealth of Kentucky, unseating the contestees, W. S. Taylor and
"John Marshall, as Governor and Lieutenant-Governor, and seat-
"ing the contestants, William Goebel, and J. C. W. Beckham, as
"Governor and Lieutenant-Governor, respectively all of which
"proceedings reports and resolutions are set out in the journals of
"the two houses of the General Assembly; and,

"Whereas, This joint assembly is now enabled to meet in its
"regular place of meeting, and, whilst it adheres to the belief
"beyond doubt that the action of the General Assembly hereto-
"fore taken in reference to said contests is valid, final and conclu-
"sive, to remove any doubt that may exist in the minds of any of
"the people of the Commonwealth; now, be it

"Resolved, By the General Assembly of the Commonwealth
"of Kentucky, in joint session assembled, to the end that all doubt
"may be removed, if any exists, as to the validity and regularity
"of the action and proceedings at the times and places shown by
"the Journals of the two Houses, other than its regular rooms,
"provided by law, that all the acts, proceedings and resolutions of
"the Senate and House and of the joint assembly of the two
"houses upon or touching the report of the majority of the Boards
"of Contest for the offices of Governor and Lieutenant-Governor,
"unseating the contestees and seating William Goebel and J. C.
"W. Beckham and declaring them to have been elected Governor
"and Lieutenant-Governor, respectively on the 7th day of No-
"vember, 1899, is hereby reenacted, readopted, reaffirmed and rat-
"ified at this, the regular place of meeting provided by law, at
"the seat of government in Frankfort, Ky."

The plaintiff further avers that the House of representatives lawfully and duly assembled in regular session, on the 20th day of February, 1900, adopted the said resolution; and thereafter

upon said day the General Assembly of Kentucky regularly convened in joint session as required by law, also adopted said resolution; that by the adoption of the said resolution the action of the General Assembly, in joint session, and in each house thereof, in theretofore adjudging and determining that the said William Goebel was lawfully elected and entitled to the office of Governor of this Commonwealth for the term commencing December 12, 1899, and that this plaintiff was lawfully elected and entitled to the office of Lieutenant-Governor of this Commonwealth for said term, was thereby ratified and reaffirmed. Copies of the journals of the houses of the General Assembly showing said proceedings will be filed as part hereof.

The plaintiff avers that by the determination and adjudication which was made by the General Assembly, as aforesaid, the powers of the said Taylor as Governor immediately ceased; but that, notwithstanding the premises, the said Taylor is still unlawfully and wrongfully in possession of the records, archives and papers pertaining to the office of Governor of the Commonwealth of Kentucky, and is, in like manner, in possession of the buildings, in which the said Executive offices are situated, and now unlawfully and wrongfully, with a large force of lawless men, holds possession of the same, ans is usurping the office of Governor of the Commonwealth, pretending to act as such Governor, and to discharge the duties thereof. Plaintiff states that by reason of the decision of the said Boards of Contest, in the matter of the offices of Governor and Lieutenant-Governor, the said William Goebel became and was Governor, and the plaintiff Lieutenant-Governor of this Commonwealth, and upon the death of the said Goebel, this plaintiff became entitled to and it was his duty to exercise all the power and authority appertaining to the office of Governor; and in pursuance to the mandate of the law he was duly inducted into said office and is now entitled to the possession of the records, archives, journals and papers and the possession of the Executive offices in the said Capitol in the city of Frankfort, all of which are now unlawfully withheld from him by the said William S. Taylor by force and arms, and which he has refused, on demand, to surrender to this plaintiff. Plaintiff further states that the defendant, William S. Taylor, has usurped, as aforesaid, the office of Governor, and is disposing of the revenues of the Commonwealth unlawfully and wrongfully drawing warrants upon the Treasury, unlawfully maintaining an armed body of men, in and about the Capitol building in the city of Frankfort, unlawfully and wrongfully appropriating the moneys and revenues of the Commonwealth, to the payment of said lawless band of men, pretending to act as Governor and issuing pardons, and attempting to do many other things as Governor of the Commonwealth, and thereby creating great confusion distrust and uncertainty in the affairs of the State; and the defendant John Marshall, is wrong-

fully claiming the right to preside over the Senate, as Lieutenant-Governor of Kentucky, and thus prevents the proper legislation of the General Assembly of the Commonwealth, and the proper legal discharge of its duties, and embarasses and impedes the plaintiff, in discharging his duties, as Governor; and that the defendant, Taylor, has caused the laws of this State to be defied, and set at naught; he has caused a citizen to be arrested without legal process, or lawful authority, and refused to obey a writ habeas corpus, duly and legally issued by a court of competent jurisdiction, and is, by his conduct, bringing the State and all the departments of government into disrepute, and casting a cloud upon all the acts of government done, and to be done, in carrying on the affairs of State, and has threatened to and will continue to so usurp the said office of Governor, wrongfully dispose of and appropriate the moneys and revenues of the Commonwealth, and do other acts of usurpation, as Governor of the Commonwealth unless prevented by an order of injunction; that if he is allowed thus unlawfully and wrongfully to continue in his usurpation, great and irreparable injury will result to the plaintiff, and to all the tax payers and good citizens of the Commonwealth. He states that no injunction hasever been applied for, granted or refused by any judge or Court in this Commonwealth in the matter herein complained of.

Wherefore, the plaintiff prays that the defendant, William S. Taylor, be adjudged to have usurped the office of Governor of this Commonwealth, and that he be deprived thereof by the judgment of this court; that this plaintiff be adjudged entitled to the said office and be placed in full possession of said office of Governor, the Executive offices provided by the Commonwealth for the use of the Governor, and that all the records, archives, books, papers, journals and all other things pertaining to the said office be surrendered and delivered to this plaintiff, by the said Taylor, and that the said Taylor be enjoined and restrained from further exercising or attempting to exercise the office of Governor of this Commonwealth; that the said John Marshall be adjudged to have usurped the office of Lieutenant-Governor, of the Commonwealth, and that he deprived thereof, and declared not entitled to the same by the judgment of this Court, and enjoined from assuming to act as such Lieutenant Governor; that plaintiff, Beckham, be adjudged the lawful incumbent of said office; and finally the plaintiff prays for his costs in this behalf expended, and for all proper relief.

W. S. Pryor,
Kohn & Baird,
Zack Phelps,
Lewis McQuown,
J. K. Hendricks,
Jas. A. Scott,
Attorneys for plaintiff.

The plaintiff, J. C. W. Beckham, says that he believes the statement of the foregoing petition are true.

J. C. W. Beckham.

Subscribed and sworn to before me by J. C. W. Beckham, this 22nd day of February, 1900. My commission expires at close of present session of Senate of Kentucky.

C. P. Chenault, Notary Public, Franklin County, Ky.

The aforesaid six exhibits filed with the petitions, being the journals of the Senate and House, and being very voluminous, are inserted in this record after the judgment, and in connection with other matters of evidence.

At a Court held as aforesaid, on the 27th day of February 1900;

This day came the defendants William S. Taylor and John Marshall by their attorneys and filed their joint answer and counter-claim here together with one exhibit being marked "Ex. A", and twelve volumns of transcript of testimony marked Volumns 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11 and 12, being made a part of said answer and counter-claim herein which answer and counter-claim is as follows, viz.:

ANSWER AND COUNTER-CLAIM.

Defendants, William S. Taylor and John Marshall, for answer and counter-claim herein against plaintiff, J. C. W. Beckham deny that said Beckham is or ever was the legally elected or qualified Governor of Kentucky, or that as such he has been or is performing the functions or exercising the powers of such Governor, though they admit that he has lately assumed to act in said capacity.

They deny that defendant Taylor has since January 31st, 1900, or at any time, been a usurper of the office of Governor, or that any of his acts since that time have been illegal or unlawful.

Par. 2. Further pleading herein, and especially in response to the second paragraph of the petition herein, plaintiffs say:

They deny that on the day named in the pleading, or at all, the Senate of Kentucky did by lot or at all select three of its members to act as members of the Board of Contest for the trial of the contest of the office of Governor of this Commonwealth; or did,

by lot or at all select three of its members to act upon the Board of Contest for the trial of the contest for the office of Governor of this Commonwealth; or that the House of Representatives of said General Assembly did by lot or at all select eight of its members to act upon the Board of Contest of the trial of the contest for the office of Governor, or did, by lot or at all, select eight of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant Governor.

They admit that the said Senate and House of Representatives did upon the day named in the pleading pretend to select by lot members of the said respective bodies to act upon the said respective Boards of Contest. But defendants say that the pretended selection was not in fact by lot, but was conducted by means of a fraudulent arrangement, the exact nature of which these defendants are not able to state, by means of which it was known in advance of the pretended selection to the contestants, William Goebel and J. C. W. Beckham and their friends and managers, who would be the persons selected as members of said Boards, or at least, it was known to said parties, in advance of said apparent selection, what would be the political beliefs of the persons to be thus selected, and what their feelings and inclinations and desires upon the subject of the contests to be tried by them, and that they would be the partisan friends of contestants. And said pretended selections by the House and by the Senate were fraudulent and utterly void, as were all of the subsequent proceedings of said pretended Boards of Contest and each of them.

Defendants deny that on January 30th, 1900, or at any time, they or either of them consented to submit said contests to said Boards for judgment without argument. The truth as to said subject will be stated in a subsequent paragraph hereof.

They deny that said Boards or either of them duly or at all considered either the matters of law or the facts involved in said contests, or that they did separately or at all decide the contests submitted to them; although they admit that the said Boards did go through the form, and make a pretense of deciding the said contests, and did make out in writing their pretended decisions, which however were fraudulent and utterly void.

They deny that on the day of January 1900 or at any time each of said Boards or either of them reported its decision to each or either House of the General Assembly.

They admit that in the contest for Governor the Board of contest pretdnded to determine, adjudge and decide that the contestant for the office of Governor was duly elected Governor for the term beginning December 12th, 1899, and that he had received the highest number of legal votes cast at said election, and was entitled to said office; and that in like manner the Board of Contest for the office of Lieutenant Governor did pretend to decide, adjudge and determine that the plaintiff, J. C. W. Beckham contestant for the

office of Lieutenant Governor was duly elected to that office and had received the highest number of legal votes, and was entitled to said office; but they say that said pretended decisions were fraudulent and utterly void.

They deny that the said decisions or reports or either of them were thereafter adopted or approved by both houses of the General Assembly in joint assembly. They deny that at the time of said pretended adoption of said reports nineteen members of the Senate constituted a majority of the members of the Senate. They have no knowledge or information sufficient to form a belief as to whether or not all of the members of said houses who may have been present at any secret meeting of said members voted to adopt or approve the aforesaid alleged reports of said Contest Boards or as to what members were thus present, or as to who voted, or how they voted.

They deny that said Houses or either of them adopted, adjudged or determined that William Goebel was duly or legally elected Governor of the Commonwealth of Kentucky at the election on the 7th day of November, 1899, or that he had then or ever received the highest number of legal votes cast at said election, or was entitled to said office of Governor; or that said Houses or either of them decided, adjudged, or determined that the plaintiff, J. C. W. Beckham was duly or legally or at all elected Lieutenant Governor of the Commonwealth, or as such entitled to the said office, or that he had received the highest number of legal votes cast thereat.

They say it is true that the pretended determination, judgment and decision of said Houses in joint assembly was entered upon the journals of each House thereof. But they say that said entries were made by the Clerks of said Houses who were friends and partisan followers of the contestants in the execution of a conspiracy between said Clerks and other friends and followers of said contestants, who were members of the General Assembly, the object and purpose of which conspiracy was to make the records of said two Houses falsely show that there had been meetings of the said two Houses, and that the said reports of said Contest Boards had been presented and adopted by said Houses at such meetings. And said entries are untrue and void and not entitled to any faith or credit.

They deny that subsequent to the aforesaid pretended joint session the said House or either of them met separately and considered or approved the said reports and findings or any of them, or adjudged or determined that William Goebel was duly or legally or at all elected to the office of Gobernor or entitled to the same, or that he had received the highest number of legal votes cast at said election; or that J. C. W. Beckham was duly elected to or entitled to the office of Lieutenant Governor, or had received the highest number of legal votes cast at said election. And they

deny that at the time of said pretended action by said Houses separately, nineteen senators were a majority of the members of the senate.

They admit that the said pretended determination and decisions of said two houses acting separately we re entered upon the journals thereof by the clerks thereof; but they say that such entries were false and fraudulent, and made pursuant to the conspiracy heretofore mentioned, and for the purposes heretofore explained and are entitled to no faith or credit.

They deny that upon the alleged adjudication or determination by said Houses of the General Assembly all, or any of the powers or authority of the defendant, William S. Taylor as Governor ceased, or that thereupon all or any of the powers of the defendant, John Marshall, as Lieutenant-Governor ceased.

They have no knowledge or information sufficient to form a belief as to whether or not the oath of office prescribed by the Constitution and laws of Kentucky to be taken by the Governor was administered to or taken by William Goebel on the———— day of February, 1900, or at any time; or as to whether or not he then or there or at any time assumed the office of Governor, or entered upon the discharge of the duties thereof. They have no knowledge or information sufficient to form a belief as to whether or not he died on the 3rd day of February, 1900, or as to when he died, though they admit that he is dead.

They deny that immediately upon the death of William Goebel, or at any time, J. C. W. Beckham become entitled to be inducted into the office of Governor. They have no knowledge or information sufficient to form a belief as to whether or not on the ——— day of February 1900 he took the oath of office as Lieutenant; Governor; or as to whether or not he took such oath before the death of said William Goebel.

They deny that defendant, William S. Taylor, on the 30th day of January, 1900, or at any time, unlawfully took possession of the Capitol or public buildings of the seat of government in the City of Frankfort, but say that he had been in lawful possession thereof since December 9th, 1899, and so continues to the present time. They deny that at any time he took possession of any of said buildings or property with an armed body of lawless men; or on that day refused to alow the members of the General Assembly to meet in the Capitol of the Commonwealth; or that said members of the General Assembly attempted to meet on that day, to-wit, January 30th, 1900, at any other place than in the chambers of the Capitol of the Commonwealth.

He admits that he did on January 31st, 1900, refuse to permit the members of the General Assembly from meeting as the General Assembly in Frankfort, but says this was solely because he had previously, in the exercise of his lawful authority as Governor, adjourned the said General Assembly to meet on Feb-

ruary 6th, 1900, in the town of London, Kentucky. He denies that his action in adjourning said General Assembly was unlawful, wrongful or corrupt, or for any corrupt or unlawful purpose.

He denies that at any time he excluded the Court of Appeals from the Capitol buildings in the City of Frankfort.

He denies that at any time he kept or maintained a large or any body of lawless or desperate men in control of any buildings, or that he by any such means or at all put the life of any member of the General Assembly in peril.

He denies that the General Assembly adjourned on the day of February 1900, or at any time to the City of Louisville; or that it ever held any sessions in the City of Louisville, or that it ever adjourned from the City of Louisville back to the seat of government; though plaintiffs admit that some of the members of said General Assembly did go thouugh the void form of pretending to adjourn to Louisville and to meet in session at Louisville and then to adjourn back to the seat of government.

Defendants deny that on February 19th, 1900, or at any time the Senate of Kentucky adopted the resolution alleged to have been adopted on that day; or that on the 20th day of February, or at any time the House of Representatives or the General Assembly of Kentucky in joint session adopted said resolution; or that by the adoption of any such resolution any former action of the General Assembly was ratified or re-affirmed.

They admit that said pretended acts of ratification and adoption were entered upon the journals of the said two Houses; but they say that said entries are false and fraudulent, and were made in execution of the conspiracy heretofore mentioned, and for the purposes heretofore mentioned, and are not entitled to any faith or credit.

They deny that by any determination or adjudication of the General Assembly the powers of defendant, Taylor, as Governor have ever ceased. They deny that his possession of the records, archives and papers pertaining to the office of Governpr, or his possession of the buildings of the State is unlawful or wrongful; or that he maintained such possession with any force of lawless men; or that he is usurping the office of Governor of the Commonwealth.

They deny that by the decision of said Boards of Contest in the offices of Governor or Lieutenant Governor William Goebel became or was Governor; or that the defendant J. C. W. Beckham became or was Lieutenant-Governor; or that upon the death of said Goebel the defendant Beckham became entitled to or it was his duty to exercise all or any of the power and authority pertaining to the office of Governor. They deny that he was duly or at all, inducted into said office; or is now entitled to the possession of any of the records, archives, journals or papers, or the possession of the Executive offices in the Capitol in the city of Frankfort.

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They deny that defendant Taylor has usurped the office of Governor, or is unlawfully or wrongfully frawing warrants, or unlawfully maintaining an armed body of men in and about the Capitol building, or unlawfully or wrongfully appropriating the moneys or revenues of the Commonwealth to the payment of any lawless band of men or at all, or unlawfully or wrongfully doing any acts, or that he has in any way created confusion, distrust or uncertainty in the affairs of the State.

They deny that the claim of defendant, John Marshall, to the right to preside over the Senate is wrongful or that thereby or at all he prevents the proper legislation of the General Assembly, or the proper legal discharge of its duties, or embarasses or impedes the defendant Beckham in discharging his duties as Governor.

They deny that the defendant, Taylor, has caused the laws of the State to be defied or set at naught, or has caused a citizen to be arrested without due process or unlawful, authority, or refused to obey a writ of habeas corpus dulyand legally issued by a Court of competent jurisdiction, or is by his conduct bringing the State or any department thereof into disrepute, or casting a cloud upon the acts of government done in the affairs of the State, or has threatened to or will continue to usurp the office of Governor or to wrongfully dispose of or appropriate the moneys and revenues of the Commonwealth, or do any other acts of usurpation; or that any great or irreparable injury, or any injury will result to the defendants, or either of them, or to any tax-payer or good citizen of the Commonwealth by any act of either of the defendants herein.

Par. 3. Further answering herein defendants, W. S. Taylor and John Marshall say each of them is over forty years of age, has been a citizen and resident of the State of Kentucky all his life, and likewise a citizen and resident of the United States all his life. They say further that, as hereinafter more specifically stated, the said Taylor was, on November 7th, 1899, duly elected Governor of the State of Kentucky, and the said Marshall duly elected Lieutenant-Governor for the State of Kentucky by the qualified voters thereof; that each of them afterwards received in due form a certificate to that effect from the State Board of Election Commissioners of the Commonwealth of Kentucky, and each of them thereafter duly qualified as such officers by taking the oath of office prescribed by law therefor, and thereby each of them became charged with an express public trust for the benefit of the people of the State of Kentucky. They say that the proceedings referred to in the petition herein by which it is alleged that the contests over the offices of Governor and Lieutenant Governor were tried and determined, and by which it is alleged that the authority of these defendants to act respectively as Governor and Lieutenant-Governor was terminated, were and are utterly void, and of no effect for the reasons hereinafter stated, and if effect be

given to them, and these defendants be thereby deprived of their respective offices of Governor and Lieutenant Governor of Kentucky, and plaintiff, Beckham be thereby installed in the office of Governor or Lieutenant-Governor of Kentucky, these defendants will be thereby deprived by the State of Kentucky of their property without due process of law and both they and the people of Kentucky, and the qualified voters thereof will be deprived of their liberty without due process of law, and will be denied the benefit of a Republican form of government, all of which is contrary to the provisions of the fourth section of the fourth article of the said Constitution and to the Fourteenth Amendment to said Constitution, the benefits of which provisions are hereby specially set up and claimed by these defendants both for themselves and for the people of Kentucky, and the qualified voters thereof, whose representatives and trustees these defendants are.

On November 7th, 1899, there was held in the State of Kentucky a general election for all officers of the State at large, including the Governor and Lieutenant Governor; and for the members of the General Assembly of said State.

At said election, defendant, William S. Taylor was the candidate of the Republican party in said State for the office of Governor, and one William Goebel was the candidate of the party claiming to be the regular Democratic party, for said office.

Defendant, John Marshall, was then the candidate of the Republican party for the office of Lieutenant Governor and defendant J. C. W. Beckham was the candidate of said alleged regular Democratie party for the same office.

There were also other candidates forsaid two offices of Governor and Lieutenant Governor, each of which candidates for Governor, however received much fewer votes at said election than either said Taylor, or said Goebel; and each of which candidates for Lieutenant Governor received much fewer votes than either said Marshall or said Beckham.

The Constitution of Kentucky, section 70 provides that the Governor shall be elected for the term of four years by the qualified voters of the State. And that "the person having the highest number of votes shall be Governor"; and also provides in section 82 thereof that "a Lieutenant-Governor shall be chosen at every regular election for Governor, in the same manner, to continue in office for the same time, and posesses the same qualifications as the Governor."

At said election on November 7th, 1899, of all the candidates for Governor, the said William S. Taylor received and had the highest number of votes for said office. He received and had for the office of Governor 193,714 votes by qualified voters of the State; while said William Goebel received and had for said office at said election no more than 191,331 votes by the qualified voters of the State. And thus the said Taylor received and had for said

office at least 2383 votes by qualified voters of the State more than any other candidate for said office.

At the said election said John Marshall received and had the highest number of votes for the office of Lieutenant Governor. He then received and had for said office 183,871 votes by the qualified voters of the State, while said Beckham received and had for that office no more than 181,360 votes by the qualified voters of the State; and thus said Marshall received and had for said office at least 2511 votes by the qualified voters of the State more than any other candidate fors aid office had or received.

After said election the results thereof were duly certified and returned by the various precinct election officers of the Saate to the several clerks of the county courts; and thereafter such returns were duly canvassed, and the results thereof duly certified by the County Boards of Election Commissioners of all the various countues of the State, and by them duly returned to the Secretary of State of Kentucky. And thereafter, viz, on December 4th, 1899, the said State Board of Election Commissioners met and duly canvassed said returns which had been made to the Secretary of State, and thereafter, viz on December 9, 1899, made out in the office of said Secretary from said returns, duplicate certificates of election in writing over their signatures to the effect that said William S. Taylor had received the highest number of votes for the office of Governor, and had been elected to fill sai doffice; and that said John Marshall had received the highest number of votes for the office of Lieutenant Governor and had been elected to fill said office. One of each of which duplicate certificates was retained in the office of the Secretary of State of Kentucky, and the other sent and delivered to the said person thus elected.

The said certificate of the election of defendant, Taylor, was and is in words and figures as follows, viz:

"COMMONWEALTH OF KENTUCKY.

"Frankfort, Dec. 9th, 1899.

"The undersigned, a Board for examining and canvassing the "returns of an election held on Tuesday, the 7th day of Novem- "ber, 1899, for

"——— Governor ———

"of the State of Kentucky, do certify, that William S. Taylor "received the highest number of votes given for that office as cer-

"tified to the Secretary of State, and is, therefore, duly and regu-
"larly elected for the term prescribed by the Constitution.

"William S. Pryor, Chairman,
"W. T. Ellis, Member.
"_____ Member.
"State Board of Election Commis-
"sioners for the Commonwealth of
"Kentucky."

The certificate issued to defendant, Marshall, was exactly similar in form except that it contained his name instead of said Taylor's and the name of the office of Lieutenant Governor instead of that of Governor.

Shortly after the delivery of said certificates, viz, on December 12, 1899, said Taylor duly took the oath of office of Governor of Kentucky, and said Marshall duly took the oath of office of Lieutenant-Governor of Kentucky, each oath being administered by Hon. James H. Hazelrigg, Chier Justice of the Court of Appeals of Kentucky.

Immediately after taking said oath of office the said defendant Taylor began to perform the functions of said office of Governor, and took possession of the public buildings and apartments provided by the State for the Governor thereof, and of all the furniture, books, papers, and other archives which are by the laws and customs of the State provided for, or committed to the keeping of, the Governor thereof; and from the time of his said qualifications by taking said oath, to and including the preswnt time, he has continuously been, and is now, performing the functions of said office, and has continuously been, and is now, in possession ofthe aforesaid buildings, apartments, books, papers, archives, &c. as Governor aforesaid.

Furthermore defendant John Marshall, from the time of his aforesaid qualifications by taking said oath of office has been continuously performing the functions of the office of Lieutenant Governor of said State.

Moreover from thetime of their respective qullifications as aforesaid to, and including the present time, these defendants have been recognized as respectively Governor and Lieutenant Governor of said State by the other executive officers of said State, viz, the Secretary of State, the Attorney-General, the Auditor of Public Accounts, the Treasurer and others.

Defendants say they are, and since December 12th, 1899, have continuously been, respectively the Governor and the Lieutenant Governor of Kentucky, both *de jure* and *de facto.*

But defendants say that the Constition of Kentucky provides that "contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law" (Sec. 90); and after the election of these defendants to the offices afore-

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said a conspiracy was entered into by and between the aforesaid William Goebel and J. C. W. Beckham, and their agents and representatives, and a large number of the members elect of the General Assembly of Kentucky which met on January 2, 1900, in and by which it was agreed that if contests should be made by said Goebel and Beckham for said offices of Governor and Lieutenant Governor, before said General Assembly or the Houses thereof, the said contests would be decided in favor of said contestants: Said agreement was entered into before said contests were heard or determined, as hereafter more fully set forth, and the decision of said contests was the result of said agreement.

Defendants say that although they received their certificates of election on December 9, 1899, the notices of contest were not served upon them until after said General Assembly met, viz, not until the evening of January 2, 1900. The said notices were esactly alike in form for the two offices, except as to the names of the offices and the contestants and contestees. The said notice of contest in saod Governor's race was in words and figures as follows, viz:

The Commonwealth of Kentucky } Sct.
County of Franklin. }

Before the General Assembly of the Commonwealth of Kentucky, and the Board of Contest to be formed therefrom for determining the contest for the office ff Governor,

William Goebel, } Contestant
Against } Notice of Contest.
William S. Taylor } Contestee.

The Contestee, William S. Taylor, is hereby notified that the Contestant, William Goebel, who was more than thirty years of age, and has been a citizen and resident of Kentucky for more than six years, next preceding the 7th day of November, 1899, will contest the election of the said William S. Taylor to the office of Governor of this Commonwealth, before the next General Assembly thereof, to be convened as provided by law, in the City of Frankfort, on the 2nd day of January, 1900, and before the Board of Contest to be organized by the said General Assembly for the purpose of determining the contest for Governor: and will then and there contest the right of the said William S. Taylor to the office of Governor of this Commonwealth by virtue of the election held herein on the 7th day of November, 1899, and the certificate of election granted unto the said William S. Taylor by

the State Board of Election Commissioners on the 9th day of December, 1899: and will ask the General Assembly and said Board of Contest to determine that the Contestant, William Goebel was legally and rightfully elected Governor aforesaid, at the said election, and that William S. Taylor was not rightfully or legally elected to said office; andsaid Contestantwill then and there ask the said Board of Contest andthe General Assembly to take such proceedings and orders in the matters of said contest as is required by law for his induction into said office.

For grounds of such contest, the contestant says:

First: In the election held in this Commonwealth on the 7th day of November, 1899, for the office of Governor, the Contestant, William Goebel was the Democratic candidate and the Contestee, William S. Taylor, was the Republican candidate for said office of Governor, and were then and there voted for as such candidates; and at said election held in the counties of Knox, Jackson, Magoffin, Pike, Martin, Johnson, Owsley, Lewis, Carter, Pulaski, Bell, Clinton, Russell, Adair, Harlan, Casey, Wayne, Whitley Todd, Caldwell, Crittendon, Perry, Muhlenburg, Monroe, Metcalf, Butler, Letcher, Leslie, Lee, Laurel, Hart, Greenup, Grayson, Estill, Edmonson, Cumberland, Clay, Breckenridge, Boyd and Allen, and in each precinct thereof, all of the official ballots used, in all of said counties, were printed upon paper so thin and transparent that the printing and the stencil marks thereon, made by the voters, could be distinguished from the back of said ballots; that none of the said ballots used in said counties, were printed upon plain white paper, sufficiently thick to prevent the printing from being distinguished from the back of the said ballots, whereby the secrecy of the said ballots were destroyed, and the said election in all of the said counties rendered void, and the printed vote thereon should not be counted in a scertaining the result of the election in this Commonwealth.

Second. That the said alleged election held in the County of Jefferson and the City of Louisville on the 7th day of November, 1899, was and is void, because the Contestant says that upon that day before the said election, the Governor of the Commonwealth unlawfully called the military forces of the State into active service in said City, armed with rifles, bayonets, and gatling guns for the purposes of overawing, intimidating and keeping Democratic voters from the polls thereof, and did himseld, in violation of the law of the land, go to the said City and County the day befre said election and assume direction and command of the said military forces and ordered and directed them to go, and they did go, in obedience to said order, to the polling places in said city, on the said of said election, and thereby many thousand of voters, to-wit, more than enough to have changed the result of the said election, were intimidated and alarmed, and failed and refused to go to the polls or to vote on said day; that for this cause the said election

in the City of Louisville and County of Jefferson, was not free and equal, but is void, and the said alleged votes cast thereat should not be counted.

Third. The contestant says that on the day of the said election in the city of Louisville, and County of Jefferson, Sterling B. Toney, one of the circuit judges ofthe county and city aforesaid, without authority of law, issued a mandatory injunction, byw which he required the legally appointed officers of the election for the City and County aforesaid, to admit in to the polling places during said election many persons who were not authorized or required by law to be in said polling places, and take part in said election and the pretended count of ballots, and were kept and maintained in the said places unlawfully and wrongfully by the saidofficers of said Judge and the military power of the State, under the direct command of the Governor, by reason of which the votes cast at said election were not fairly counted, but the result left in doubt and uncertainty and for this cause the said election was void and the alleged and pretended votes cast thereat in sqid city should not be counted.

Fourth. The said Contestant says that at the said election, held as aforesaid, on the 7th day of November, 1899, in the County of Jefferson and City of Louisville and Warren, Hopkins, Christian, Knox, Whitley, Pulaski, Bell and divers other counties of this Commonwealth, that many thousands of the legal voters thereof, to-wit, more than enough thereof to have changed the result of said election wgo were in the employment of the Louisville & Nashville Railroad Company and other corporations were intimidated by the officers and superior employees of said Company and corporations by threats of less employment and discharge from the service of the said company and corporations, and were thereby forced and compelled to vote and did, for this cause, vote for the Contestee for the office of Governor when in truth and in fact they desired to vote for the Contestant, and would have done so but for such intimidation and duress. For this cause the said election held in said counties was and is void.

Fifth. The Contestant savs that before the said election on November 7th, 1899, the leaders of the Republican party in the Commonwealth corruptly and fraudulently entered into an agreement and conspiracy with the said officers of the Louisville & Nashville Railroad Company and the American Book Company and other corporations and trusts, by which the said companies, corporations, and trusts agreed to furnish large sums of money to be used in defeating the Contestant at said election by bribing and corrupting the voters and election officers of this Commonwealth and debauching the public press thereof; and that in pursuance to the said conspiracy the said companies, corporations and trusts ddd furnish large sums of money which were so corruptly and unlawfully used in the Counties of Jefferson, Warren, Fayettee,

Breathitt, Hopkins, Daviess, Logan, Todd, Henderson, Pulaski, Whitley, Knox, Bell, Hardin and divers other counties of the Commonwealth and by which many thousand of the legal voters thereof were bribed and corrupted, and thereby caused to vote for Contestee. Newspapers were purchased and debauched and officers of said election bribed, and the Contestant deprived of many thousand voted which he would have received but for the unlawful and corrupt conspiracy aforesaid, which votes were sufficient to have elected him.

Sixth. The Contestant further says that in the counties of Knox and Lewis, the County Board of Election Officers, whose duty it was by law to correctly certify the result of the election held in their respective counties, were compelled by unlawful mandatory injunctions issued by circuit judges and clerks, to sign false returns and certificates of said election, giving to the Contestee large majorities of the votes cast in said counties: and in the County of Knox, the said board was compelled by duress and open threats of violence from a large body of armed citizens of said county, assembled at the county seat, to sign false and fraudulent certificates. In the County of Jefferson, the officers who held said election at the voting places in the city of Louisville, were compelled to sign like false and fraudulent certificates of said election, by duress, and under threats of Sterling B. Toney, one of the Circuit Judges of the Commonwealth, who announced his purpose to fine and imprison said officers if they did not sign said false certificates. By reason of the duress aforesaid, and the said unlawful mandatory injunctions the votes in the said counties and all the precincts thereof, were not correctly counted or certified, and the said votes so certified should not now be counted in determining the result of said election. All of said certificates were signed and made under dures and would not have been signed but for the facts aforesaid.

Seventh. The contestant says that in pursuance to a conspiracy of the leaders of the Republican party in Kentucky, and the United States Marshall for the District of Kentucky, to intimidate and deter the Democrats and friends of Contestant from voting for him, said Marshall and other officers and persons threatened to indict many of contestant's supporters in the United States Court for the District of Kentucky for alleged violation of law in connection with said election, and in pursuance to said conspiracy caused their threats to be published in the daily press of the State, and in other forms, and upon the day of said election caused Deputy United States Marshalls to be and remain at the polling places in the City of Louisville, and in various other cities of the Commonwealth, intermeddling with the said election, overawing, threatening and intimidating Democratic voters and their friends and supporters of the Contestant, whereby many voters, to-wit, more than enough to have changed the result of said elec-

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tion, were prevented from voting for Contestant, who otherwise would have done so.

Eighth. The Contestant says that after said election and before the meeting of the State Board of Election Commissioners, in the City of Frankfort, a conspiracy was formed and entered into by the Contestee, the Louisville & Nashville Railroad Company, John Whallen who was its paid agent, and other persons whose names are unknown to Contestant, to bring from various sections of this Commonwealth large numbers of desperate armed men, for the purpose of alarming and intimidating the members of the said Election Board in the discharge of their duties, and the friends andsupporters of Contestant: and that in pursuance to said conspiracy the corporations and persons aforesaid, did transport to the city of Erankfort at said time, a larg number of the militia of the State, dressed in citizen's clothing, and many hundreds of desperate armed men, and unlawfully kept and maintained said militia and armed men in and about the chamber and Capitol where said election board held its sessions for several days; for the unlawful purpose of alarming and intimidating the members of said Board and the good citizens of the Commonwealth; and the said corporations and persons also caused the military forces of the Commonwealth to be armed and equipped and held in readiness and the State Arsenal to be guarded by armed men for the unlawful puraforesaid, and Democratic members of the military companies of the State militia to be disarmed and discharged and their places to be filled with Republicans.

Ninth. The contestant for further grounds of contest herein says that, in the County of Jefferson, the County Board of Election officers, whose duty it was to ascertain and correctly certify the result of said election held in said County, were compelled by threats of violence and death to the two Democratic members of said Board to accept, and said Board by reason of the duress aforesaid, did accept false, fraudulent and illegal returns from the various precincts in the City of Louisville, which returns from the various precincts in the City of Louisville, which returns were prepared by the attorneys and agents of the Republican party and were signed by the precinct officers aforesaid under duress and threats of fine and imprisonment, and said Board of Election officers, by reason of the duress aforesaid, based, upon their cirtificate as to the result of said election in said county upon the said false, fraudulent, and illegal returns made by the said precinct officers as aforesaid, and for this cause the Contestant was deprived of many thousand votes cast for him at said election and the contestee was given many thousand illegal votes to which he was not entitled, to-wit, more than enough to have changed the result of the said election, and for this cause the said election was and is void and the alleged vote of Jefferson County as certified by said County

Board should not be counted in ascertaining the result of said election in this Commonwealth.

Tenth. The Contestant further avers that many thousand of persons, who were not entitled to vote at the said election, on November 7th, 1899, were unlawfully brought into this Commonwealth by the agents of the Louisville and Nashville Railroad Company and others acting in Contestee's behalf, and at said election were wrongfully and unlawfully voted for the Contestee in said election; that the number of votes so cast were sufficient to have changed the result of said election.

The contestant will, upon the grounds aforesaid, at the time and place and before the tribunals stated, contest the election of said William S. Taylor to the office of Governor of this Commonwealth.

Signed,

WM. GOEBEL.

Defendants say that of the 100 members who by law compose the House of Representatives of Kentucky 59 of those composing the House which convened on January 2, 1900, the first day of the present session, were Democrats, and 41 were Republicans, and of the 38 members who by law compose the Senate of Kentucky 26 of those composing the Senate which met on January 2, 1900, were Democrats and 12 were Republicans. Moreover of the Democrats in the two Houses, at least ten were currently believed and reported to be opposed to Goebel, so that of the 138 members constituting the two Houses of the General Assembly at least 63 of them were generally believed to be anti-Goebel men, and not more than 75 of them were believed and currently reported to be Goebel men; the feelings and beliefs of some of them being unknown.

Said two Houses of the General Assembly after meeting were immediately organized by the election of officers, all of whom were Democrats and strong partisan friends of the contestants.

The statute governing the trial of contests over the result of the election of a Governor or Lieutenant-Governor, and which is commonly called the Goebel law, requires that on the third day after the organization of the General Assembly which meets after the election, the Senate shall select by lot three of its members and the House eight of its members, and the eleven thus selected shall constitute a Board to try a contest over the election of either a Governor or Lieutenant-Governor; but that its decision shall not be final nor conclusive; and shall be reported to the two houses of the General Assembly; and that the General Assembly shall then determine the contest.

Accordingly the defendants say that on the third day after the organization of the said General Assembly, the House of Representatives pretented to select by lot eight of its members to act as

a board for trial of the contest over the election of a Governor and eight other members to act as a Board for the trial of the contest over the election of Lieutenant Governor; and the Senate pretended to select three of its members to act on said first named board, and three others to act on said second board.

But defendants say said selections were not fair and honest selections by lot, but by some kind of improper trick or device, which was part of the conspiracy aforesaid, the pretended selections by lot were not in fact such, but it was known in advance thereof by said Goebel and Beckham or their managers, who the members of said two boards would be. The exact nature of the trick or device defendants cannot state, though plaintiff probably can; but as a result thereof out of the eleven members selected for the trial of the Governor's contest only one was a Republican, and out of the eleven men selected for the trial of the Lieutenant Governor's contest only two were republicans; or, in other words, out of thw twenty-two members selected to try said two contests only three were Republicans and the other nineteen were all Democrats, and all of said nineteen were pronounced and well recognized Goebel men; so that while in the General Assembly there were at least 63 men generally believed and currently reported to be anti-Goebel men, and not more than 75 Goebel men, yet on said Committees only 3 out of said 63 were chosen, while 19 out of said 75 were chosen.

Defendants further say that among the members selected to constitute the Board for the trial of the contest over the office of Governor were G. W. Hickman, G. T. Finn, H. B. Lyon, and R. C. Crenshaw each of whom had been present at a meeting of the Democratic Committee and other Democrats in Frankfort, Kentucky on the 14th and 15th days of December, 1899, which meeting had been called for the purpose of determining the advisability of a contest being made by said William Goebel for the office of Governor, at and in which it was decided that the contest should be made and the said persons above named and which were selected to act on said Board, advised on the occasion just mentioned that the said contest should be made, and represented to the meeting that the Democratic voters of their respective counties were enthusiastically in favor of such action.

Furthermore another member selected to act on said Contest Board was one J. Embry Allen, whose own seat in the General Assembly was contested on grounds which were the same as the grounds set forth by the defendant, Taylor, in a counter-notice to the said contestant William Goebel, in so far as they apply to the county of Fayette, from which said Allen claimed to have been elected.

Furthermore, another member of the General Assembly selected to act on said contest board was one Abram Rennick, who had wagered money with one James M. Owens on the result of

the aforesaid election, betting that the contestant, William Goebel, would be successful, and which bet was held up until the said contest should be determined.

And defendants further say that on the board selected to try the contest over the office of Lieutenant-Governor was one G. A. Holland who was likewise present at the aforesaid meeting of Democrats at Frankfort on the 14th and 15th days of December, 1899, and who strongly advised the making of the contests over the offices of Governor and Lieutenant-Governor.

And another member of said contest Board, selected to try the contest over the office of Lieutenant-Governor was one A. P. Crawford, whose own seatin the General Assembly was then being contested upon some of the same grounds that were involved in the contest over the office of Lieutenant-Governor.

And defendants further say that another member of said board was one S. B. Harrel against whom there was then pending in the State of Keutucky a charge of felony and who had theretofore publicly stated that he had received a large sum of money on a promise by himself to vote against the contestants, although he pretended that he had received the same merely in order to catch in a trap the person who paid it to him.

After said committees were chosen, the regular committees of the two houses were selected, it being known that it would be the duty of the "Committee on Rules" in the two houses to meet together and frame a joint-rule which should govern the proceedings on the trial of said contests. In theHouse the speaker thereof was a democrat and was allowed to appoint the committees of the House; but in the Senate, where the Lieutenant Governor was the presiding officer, he being a Republican, the Senate itself determined to, and did, select its own committeees, and it selected as chairman of the Committee on Rules said contestant, William Goebel, who was a member of the Senate, and thus became the head of the Committee whose duty it was to frame the rules of proceedure for the trial of his own contest.

Accordingly there was framed and reported to, and adopted by the two Houses of the General Assembly, among others, the following rule, called

Joint Rule No. 11.

"When it is not otherwise provided by law, the members of the Senate and House of Representatives, in the selection of all officers elective by the General Assembly as an entirety, and in the consideration and determination of any contested election for the offices of Governor and Lieutenant-Governor that may be brought before it, shall be convened in joint meeting, and unless differntly prescribed by law, a majority of the members of the two bodies shall constitute a quorum, in joint meetings for the transaction of all business before it.

"All joint meetings of the Senate and House of Representatives shall be held in the Hall of the House of Representatives, and in all cases in which the date of any such meeting is not fixed by law, the time shall be designated and fixed by the order of Speaker of the House of Representatives, which order shall be entered upon the Journal of the House by the clerk thereof, and a copy of said order he shall certify and deliver to the clerk of the Senate, who shall enter the same upon the Journal of that body.

"At all such meetings the President of the Senate if he be not personally interested in the business before the joint meeting, and in that event the President pro. tem. of the Senate, if he shall not be under like disqualification, may occupy a seat to the left of the Speaker of the House, but the Speaker of the House shall preside, preserve decorum, put questions, decide all points of order and perform the duties usually discharged by presiding officers. The clerk of the Senate shall be chief clerk, assisted by the clerk of the House. They shall enter upon the Journal of their respective bodies the proceedings of the joint assembly. In recording any vote required to be entered upon the record the names of the Senators shall be first called, and then those of the Representatives, and all questions shall be determined by a majority of the votes cast. The sergeant-at-arms of the Senate, assisted by the sergeant-at-arms of the House, shall perform the duties of that office in the joint meeting, and the doorkeeper of the House, assisted by the doorkeeper of the Senate shall perform the duties of that office in the joint meeting.

"Committees having in charge any contested election for the office of Governor or Lieutenant-Governor shall make their reports to a joint meeting of the two Houses of the General Assembly, accompanied by such declaration of findings and resolutions, or either, as may be proper; and the joint meeting may at any time compel the committee to report. Such report, when made, shall be immediately taken up for consideration and discussion for a time of not exceeding six hours" one-half of which shall be allotted to each side. At the conclusion of said time, or sooner if the discussion shall have ceased, the joint meeting shall vote to a conclusion of the business before it without intervening motion or business. The time of adjourning the joint meeting shall be controlled by itself, without reference to the hours of adjournment fixed by the rules for the government of the two bodies separately."

Thus, although the Constitution and the Statute of the State on the subject of contested elections clearly provide that the two houses of the General Assembly shall act separately in determining contests for the office of Governor, and Lieutenant-Governor, yet the said rule required that said houses act in joint session in passing on the said contests between defendants herein and said Goebel and Beckham.

Furtheremore, although the Constitution of the State provides that the Lieutenant Governor shall by virtue of his office be President of the Senate, yet the said rule provided that at all joint meetings of the Senate and House of Representatives in the trial of said contests the meeting should be presided over by the Speaker of the House of Representatives, and gave him the power also to call such joint meetings.

Furthermore said rule provided that the report of the committees having in charge any contested election for the office of Governor or Lieutenant Governor should be made to a joint meeting of the two Houses of the General Assembly, accompanied by such declarations of findings or resolutions as might be proper but made no provisions for returning with such report any part of the evidence on which the report was based; but on the contrary expressly provided that when such report should be made it should be *immediately* taken up for consideration and discussion for a time not exceeding six hours, one-half of which should be allotted to each side; and that at the conclusion of such time, or sooner if the discussion should have ceased, the joint meeting should vote to a conclusion of the business before it, without intervening motion or business; thus excluding the possibility of the members of the General Assembly, other than those who had sat upon the contest committees, becoming acquainted with the testimony which had been introduced on the trial of said contests; although the Constitution of the State provides that "contested elections for Governor and Lieutenant Governor shall be determined by both houses of the General Assembly", abd the statute on the subject expressly provides that the decision of the contest committee shall not be final, but that its decision shall be reported to the two houses of the General Assembly, and that "the General Assembly shall then determine such contests."

Defendants further say that after the aforesaid contest committees had been selected they adopted rules for their procedure on the trial of said contests, which rules, being the same as to each committee, are in words and figures as follows, to-wit:

The Rules of Contest.

First. During the sittings of this board it shall be presided over by its chairman, whose duty it shall be to swear witnesses and maintain order.

Second. The board shall be subject to the call of its chairman and shall determine the time and place of the meetings.

Third. Either of the parties to the respective contests may apply to the chairman of said board or its clerk for the issuance of process of subpoenas for attachment or attendance of witnesses or the production ofpapers, books, or documents and upon application of either party or his accredited attorney, the said chairman

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shall issue such writ and the same shall be promptly executed by the Sergeant-at-Arms of either house of the General Assembly or by some person or persons authorized or delegated by said Sergeant-at-Arms.

Fourth. All evidence to be heard before the said board must be produced orally with leave to opposing parties to make proper cross-examination by counsel.

Fifth. Each party to the contest to be heard by this board may be represented in person and by counsel if desired.

Sixth. The meetings of said board and the taking of all evidence and the hearing of the arguments shall be public, but at the conclusion of the evidence and arguments the board shall go into executive session for the purpose of considering and deciding the contest or preparing its opinion with reference thereto.

Seventh. Both parties shall have and are given time for the preparation of their respective contests and defenses until January 15, 1900, and during the interim the chairman shall see that all requests for subpoenas and processes are promptly granted to all parties in interest, and are promptly and properly executed.

Eighth. The first meeting ofthe board for the purpose of hearing evidence shall be on January 15, 1900, at 9 o'clock a. m., in the room of at which time the contest to be heard by this board is now assigned for hearing. The contestant shall have four consecutive days thereafter for the taking of his testimony, at the conclusion of which the contestee shall have five consecutive days forthe introduction of his testimony, after which the contestant shall have one day in which to introduce any rebuttal evidence that he may desire. At the conclusion of the evidence the board shall fix a reasonable time which shall be allowed to parties upon each side for oral argument.

Thus by the adoption of the foregoing rules which were promulgated on the 5th day of January, 1900 and fixed January 15th, 1900, as the day for the beginning of the trials, these defendants were only allowed ten working days after the giving of the notices of contest, and only eight working days after the fixing of the day for trial, within which to prepare for the trial of said contests, although the grounds of contest alleged in general terms illegalities and wrong-doings in connection with the election all over the whole state, and also alleged with somewhat more specification illegalities and frauds and other wrongs in 52 specified counties of the State. And defendants say that if the said trials were to be genuine bona fide trials, the time thus allowed for preparation was utterly inadequate and wholly insufficient for a proper preparation for such trials.

Defendants say however that within the brief space thus allowed them they made such preparation for the trials as it was possible to make by the exercise of the greatest possible diligence.

Before entering upon the said trials, defendant Taylor objected to said G. W. Hickman, G. T. Finn, H. B. Lyon, R. C. Crenshaw, J. Embry Allen or Abram Renick, or any of them, sitting as members of the committee trying the contest for the office of Governor on the ground that they were incompetent thus to sit for the reasons heretofore stated herein. And defendant Marshall objected to the said G. A. Holland, A. P. Crawford, or S. B. Harrel or any of them sitting as members of the committee to try the contest for Lieutenant-Governor on the ground that they were incompetent thus to sit for the reasons heretofore given herein. Said objections however were promptly overruled, and said members continued to sit upon the said committees.

Defendants also, before the introduction of any evidence, filed exceptions to the sufficiency of each of the paragraphs of the notices of contest and demurred to each paragraph thereof, and moved to strike out of each of said paragraphs.

But defendants say that the said committees very promptly overruled all of said exceptions and all of said demurrers and all of said motions to strike out.

Thereupon defendants filed traverses of all the allegations of fact contained in the notices of contest, and subsequently filed counter-notices for the purpose of showing that the vote as retured in favor of the contestants was false and fraudulent, and that the contestant Goebel did not in reality receive any more, if as many, as 166,000 votes in the State of Kentucky, although the returns of the election showed him to have received 191,313 and for the purpose of showing that at least 25,000 persons voted for defendant Taylor whose votes were counted for the contestant Goebel, and at least 25000 voters were prevented from voting for defendant Taylor by reason of fraud, force, intimidation and intentional delay in taking the vote. Said counter-notice by defendant Taylor is too long to be set forth herein, but a printed copy thereof is filed herewith marked exhibit A.

Demurrers were filed by the contestant Goebel to many portions of said counter notice, and motions made to strike out many portions thereof; and many of said motions and demurrers were sustained by the said Board. The rulings of said contest Board were in many respects flagrantly unfair to the contestee and partial to the contestant, and in direct conflict with rulings which the Board had made in passing upon the contestant and his motions to strike out portions of the same. It would require too great detail and prolixity to set forth the separate rulings of the said Board; but defendant has indicated on the margin of the printed copy of the said counter-notice the portions thereof which were either stricken out by the Board or to which demurrers were sustained.

From this it will be seen, and it is true, that while the said committee overruled the demurrer and exceptions of defendant

Taylor to these portions of the notice of contest which charged the use of force in obstructing the election in Jefferson County where a large majority was given to the defendant Taylor, yet the said committee sustained a demurrer filed by the contestant Goebel to the entire thirteenth paragraph of defendant Taylor's counter notice (pages 8 to 24) in which defendant Taylor charged the use of force and fraud in obstructing the election and preventing a free and full expression of the vote in Kenton County, the home county of said contestant Goebel, and in which a very large majority was returned in favor of said Goebel.

So in the matter of hearing evidence, these defendants, by the exercise of extraordinary diligence, and at great cost brought to the city of Frankfort, where the contest was being tried, a great number of witnesses for defendants on the issue raised by the notices and counter-notices; but the said committee fixed an absolute time limit upon contestees for the introduction of their testimony; and although when the end of said limit was reached the defendants had introduced only a small part of their witnesses and heard only a small part of their evidence, and although they earnestly requested additional time for the introduction of the balance of their testimony, the said committee refused to extend the said time. There was in all granted to defendants 8½ days for the introduction of their evidence; but a very large part of this time, not less than two days thereof, in the aggregate, was consumed by counsel for contestants in arguing questions of the admissibility of evidence, and demurrers and motions, notwithstanding the fact that contestees, in order to save time for the introduction of their testimony, declined to argue most of the said matters.

And the counsel for the contestants furthermore consumed a very large part of the time allowed to the contestees by unduly and needlessly protracting the cross-examination of witnesses for xcontestees on frivilous, irrelevant, immaterial and incompetent matters. The result of all this was that the time allowed the contestees for the introduction of their evidence was wholly insufficient; and although they announced to the said committees when the end of said time was reached that they had a great deal of other evidence of a material character which they desired to introduce bearing directly upon the issues involved, and although they announced that the said witnesses were in Frankfort and ready to testify, all of which announcements were true, yet the committees absolutely refused to make any further extention of time.

Defendants further say that the said committees finally concluded the hearing of evidence on January 29th, and ordered that the argument should begin on the next day, to wit, January 30th, allowing each side ten hours to argue the contest, and ordering that the argument on the first day should not in all exceed six hours. On the next day, to wit, on January 30th, being the day

on which the argument was to begin, and just before the time arrived for the beginning of said argument, the said contestant, William Goebel, was assassinated, that is to say, he on that day received the wound from which he afterwards died. The said wounding of the said Goebel instantly caused great and extraordinary excitement in the city of Frankfort, and feeling and passion in the people and members of the General Assembly ran very high, so that for a time there was serious danger of mob violence, and threats were made against and communicated to the attorneys for the contestees, to the effect that two of them would be killed if they attempted to argue said contests. The communications of these threats were not made by irresponsible persons or anonymous communications; but some of the counsel for the contestants stated to the counsel for the contestees that they felt it due to themselves as men and as lawyers to notify the counsel for the contestees that in their judgment two of the said counsel for contestees (naming them) would be killed if they appeared before the said committee to argue the said contests. Under these circumstances the counsel for the contestees addressed a communication in writing to the contest committees setting forth briefly the facts above mentioned, to wit, that they felt their lives would be in danger if the case was argued on that day, and requested a postponement of the argument merely until the next day, in order that the excitement and passion might have a brief space in which to become allayed, and at the same time offered that if this postponement should be granted them, the counsel for contestees would agree that the time thus lost from the argument on that day should be taken out of the time allotted to the counsel for the contestees in the entire argument, so that no time at all would be lost in reaching the ultimate decision of the case.

But the said contest committees unreasonably and arbitrarily refused the said request and determined to proceed on that day with the said trial of the said contests. The result of this was that the counsel for the contestees declined to argue the causes because, while two of them were present yet the others were not present and were practically excluded from being present except at the imminent risk of their lives, and those who were present knew furthermore that it would be utterly useless to attempt to argue the case under the circumstances existing on that day, as they were in no condition to speak, and the members of the committee were in no condition to listen to argument.

Thereupon the said committees without hearing any argument at all, and without any regard whatever to the law governing such contests, or to the facts as shown by the evidence, but in execution of the conspiracy aforesaid, and actuated purely and entirely by personal and party passion, did arbitrarily and tyranically, and in utter disregard of the law, the truth and the evidence, and contrary thereto, adopt the following finding and report to be

made to the General Assembly with respect to the contest as to Governor, that as to Lieutenant Governor being exactly like it except as to names, to-wit:

"General Assembly, Commonwealth of Kentucky-Before the Contest Board for the trial of the contest of William Goebel, contestant, vs. W. S. Taylor, contestee.

"William Goebel, contestant, vs. William S. Taylor contestee.

"The undersigned, the board appointed and selected by the General Assembly to determine the contested election of the office of Governor of this Commonwealth between William Goebel, contestant and William S. Taylor, contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky, that in our opinion, William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved, and a resolution adopted by this joint Assembly declaring the said William Goebel Governor-elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes, and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

Frankfort, Jan. 30, 1900." G. W. HICKMAN, *Chairman.*

The said finding and report were adopted by the committee of contest for the office of Governor by a vote of ten to one, and by the committee of contest for the office of Lieutenant Governor by a vote of nine to two.

Thus it appears, and it is true, that the said committees did not state, and in fact they did not even pretend to determine on what ground or grounds they pretended to reach the conclusions expressed in said findings, but simply pretended to make general findings that said William Goebel and J. C. W. Beckham had respectively received the highest number of legal votes and were therefore respectively elected Governor and Lieutenant Governor of Kentucky.

But defendants say that while there was a pretense and the form of a trial and determination of said contest, it was no more than a pretense, it was not a bona fied trial but simply an act of tyranny and oppression committeed under the form of law.

Grounds of Contest.

As to the fourth, fifth, eighth, ninth and tenth grounds of contest set forth in said notices, of contest, to-wit, that the Louisville & Nashville Railroad Company and other corporations intimidated

their employes and prevented them from voting for contestants, and that the Louisville & Nashville Railroad Company and other corporations conspired to corrupt and purchase and bribe voters, thus preventing them from voting for the contestants; and that the Louisville & Nashville Railroad Company entered into a conspiracy with one John Whallen to transport a large number of persons to Frankfort for the purpose of intimidating the State Board of Election Commissioners, and that the Board of County Commissioners for Jefferson County were intimidated and forced by threats to accept false returns, and that the Louisville & Nashville Railroad Company imported into the State many persons and voted them illegally, there was not a scintalla of evidence introduced before said committees.

The only grounds of contest upon which there was any pretense of introducing evidence were those set forth in the first, second, third, sixth and seventh paragraphs of the notice.

First Ground.

The first ground of contest was in substance that in forty named countied of the State the official ballots which are required by law to be, and had been, furnished by public authority and upon which the voters were required to vote, or not vote at all, were printed upon paper so thin that the printing and the marks made thereon by the voters could be distinguished from the back of said ballots, and that thereby the secrecy of the ballots was destroyed, and the election in all of said forty counties thus rendered void.

Defendants say it is true there was conflicting evidence on the question as to how thick the paper was upon which the official ballots were printed in certain of the aforesaid counties, and as to whether or not the printing or marks upon the face of the ballots could be seen from the back of the ballot. But defendants submit that whatever may be the truth as to said allegations, yet the ballots upon which the voters voted in those counties were furnished to the voters by the State; the voters were by law required to vote upon those official ballots; or not to vote at all; and said ballots having been furnished by State authority, the electors of Kentucky in the counties aforesaid who used the said official ballots could not be disfranchised, and their votes rejected, because they used the ballots which the State required them to use. But they and all the other citizens of the State had and have a right to demand that their votes cast by the use of such ballots shall be counted.

Moreover defendants say that if by any reasoning it should be concluded that the votes cast in the aforesaid counties upon the ballots furnished by the State, should be rejected, and the election in those counties declared void, the result of such action, even

if it should defeat the claim of these defendants to the offices of Governor and Lieutenant Governor, would furnish no ground for giving said offices to the contestants William Goebel and J. C. W. Beckham. But if it be true that in those counties the election was void by reason of the State's own action in furnishing improper ballots, and that to take those votes from the defendants would give an apparent majority to the contestants, then the result must be that the entire election was void, and there was no election held in the State for the offices of Governor and Lieutenant-Governor. For defendants say there are 119 counties in the State, and the qualified voters of all said counties have a right to participate in the choice of the Governor and Lieutenant Governor of the State; and there is no authority for the State to hold an election less than the whole number of said counties, and thus to enable the people of certain sections of the State, to the exclusion of other sections of the State, to elect a Governor and Lieutenant Governor for the whole State.

Moreover defendants say that they themselves introduced evidence showing that the ballots furnished by the State and used by the voters in many of the counties of the State, in which there were Democratic majorities, were just as thin and transparent and therefore just as defective as in those counties objected to by the contestants, if any of them were defective; and that the exclusion of said Democratic majorities in those counties was sufficient to off-set, if they did not more than off-set the exclusion of the Republican majorities in the said counties objected to by contestants.

Defendants further say that, if the State, after having furnished to its citizens and electors in a number of its counties official ballots upon which it required them to vote, or not vote at all, in the election of a Governor and Lieutenant Governor, shall reject their votes, and thus refuse to allow them to participate in the election of such officers, merely because they used in voting the ballots which the State required them to use, and if the State shall, thereby and on that account refuse to allow the persons respectively chosen for the office of Governor and Lieutenant Governor by the majority of the qualified voters of the State, including those using the ballots aforesaid, to take their seats and perform the duties of Governor and Lieutenant Governor, and shall in lieu of them seat other persons, then the State will thereby deprive the said citizens and electors, all of whom are both citizens of Kentucky and citizens of the United States, of their political liberty without due process of law, in violation of the Constitution of the United States, and will thereby deny to them the benefits of a Republican form of Government in violation of the Constitution of the United States; and will thereby also deprive these defendants of their property without due process of law all of which is contrary to the provisions of the Constitution of the United States.

Second Ground of Contest.

The second ground of contest was that in the County of Jefferson on the day before the day of election the Governor of the Commonwealth called the military forces of the State into active service in the City of Louisville for the purpose of over-awing and intimidating Democratic voters and keeping them from the polls, and that thereby many thousand voters, to-wit, more than enough to change the result were intimidated and thereby kept from going to the polls; and that for this reason the election in Jefferson County was not free and equal and is void, and the votes cast thereat and therein shall not be counted.

Defendants say that on the trial of said contests there was no conflict in the evidence as to the actual movements of the military in the City of Louisville on the said election day. The evidence showed simply this and no more, to-wit, that on said date certain members of the military of the State, all of whom were citizens of Louisville, were held in the Armory in the City of Louisville; but that during the entire period while the vote was being cast said military were not upon the streets, except when they went, without arms, to dinner, to a hotel not more than two squares from the Armory, passing no voting place in so doing; and that the only time they appeared upon the streets with arms upon the election day was between six and seven o'clock in the evening of the election day which was about three hours after the voting had ceased, and the polls had closed, at which time they were called out to enforce certain orders of the Jefferson Circuit Court for the admission to the polls of inspectors whose right and duty it was to witness the count of the vote, and which orders of Court were being flagrantly violated; but that even then the said military, when thus called out found all of the polls to which they went had been closed, and that the duties of the officers had been completed, except in the case of two polls, as to which they found that the aforesaid inspectors had already been admitted, before the military got there, and which polls therefore they did not enter, and at which they disturbed no one at all.

Not a single witness testified before said contest committees that he knew of a single person who had been kept from voting in the City of Louisville by reason of the presence of said military.

Furthermore it was shown in evidence, and not contradicted, that the presence of the military in the City of Louisville on election day was not an unusual thing, but that for several years past it had been a common practice to have a military force held in readiness in the City of Louisville on election days for the purpose of preserving order and protecting property, which has been done both on occasions when Democrats were elected, and when Republicans were elected.

Third Ground of Contest.

The third ground of contest was that one of the Judges of the Jefferson Circuit Court wrongfully issued certain mandatory injunctions directing the admission into the polling places of persons not entitled by law to be there, by reason of which the said election in the City of Louisville is void.

Defendants say it was shown in evidence that the matter here referred to was the issuing of a mandatory injunction simply directing the admission into the polling places as simple inspectors of election certain persons as, representatives of the Republican party and what was known as the Honest Election Democratic party. But defendants say it was shown in evidence, by the copy of said order of injunction itself, that said inspectors were not ordered to be admitted, and were not in fact admitted, until after four o'clock, the time the voting ceased, and not until after the voting had been completed; and that they were ordered to be admitted, and, in so far as they were admitted at all, were admitted simply to witness the count; without any authority whatever to determine how any votes should be counted; and that they could not possibly have injured the contestants in any way, and did not do so; so that whether the Court construed the law as to the admission of inspectors correctly or incorrectly, its action in no way injured the contestants.

And defendants further say that it was not alleged in said notices of contest or proved in the evidence that any wrong was done by the qualified voters of the City of Louisville who did vote on the said election day. It was not shown or claimed that they were responsible for the calling out of said military, or the issue of said injunction; and no reason was shown why their votes should not be counted as they were cast, or why they should be disfranchised and refused permission to participate in the election of a Governor and Lieutenant Governor even if the calling out of said military or the issue of said injunction was improper.

Sixth Ground of Contest.

As heretofore stated the fourth and fifth grounds of contest were absolutely unsupported by a scintilla if evidence and were abandoned.

The sixth ground of contest was that in the counties of Knox and Lewis the County Boards of Election Commissioners were compelled by unlawful mandatory injunctions to make false returns of election, giving to the contestees large majorities in said counties and were compelled by duress to sign false certificates; and that in the County of Jefferon election officers were compelled by a Judge of the Jefferson Circuit Court to make and sign false certificates, and that by reason of the said alleged facts, the votes in said counties and precincts should not be counted.

Defendants say there was an utter failure to establish by proof the charges in the said sixth paragraph of the notice.

It was shown that in the County of Knox the County Board of Election Commissioners was simply ordered to proceed to canvass the returns and certify the votes cast, as shown by the returns of the precinct officers of that county; but it was not shown, nor was there a scintilla of evidence to show, that said Board was compelled to certify to anything that was untrue.

As to the County of Lewis, not a scintilla of evidence was introduced.

As to the County of Jefferson it was only shown that one order of injunction was issued as to counting or certifying votes, and this only applied to one precinct, and as to this one, it was shown that the injunction was simply to count the vote which the precinct officers had wholly failed to do, but as to which they had simply returned the ballots to the county clerk without counting them. Under this injunction the ballots were counted by said precinct officers in the presence of parties selected respectively by the Republican and Democratic parties, resulting in a majority of less than fifteen in that precinct for defendants, Taylor and Marshall.

Moreover defendants say that the total majority of defendants Taylor and Marshall in the County of Knox above mentioned was only 1385; and the total majority of defendants, Taylor and Marshall in the precinct in the City of Louisville which was counted under order of Court was only 15 votes; so that the total majority of defendants Taylor and Marshall in all of the counties or precincts where the vote was counted or certified under order of Court was 1400 votes. And as the majority of defendant Taylor over the contestant Goebel in the whole State was 2383 and the majority of defendant Marshall over the contestant Beckham in the whole State was 2511, therefore even if all of the votes counted under injunctions, as above explained, should be rejected this would not change the result of the election either for Governor or Lieutenant Governor.

Seventh Ground of Contest.

The seventh ground of contest was that pursuant to a conspiracy of the leaders of the Republican party in Kentucky and the United States Marshall for the District of Kentucky to intimidate and deter Democrats and friends of contestants from voting for them, the said Marshal and other officers and persons threatened to indict many of the supporters of contestants in the United States Court for the District of Kentucky for a violation of law in connection with said election, and caused these threats to be published in the daily papers, and upon the day of election caused Deputy United States Marshals to be and remain at the polling

places in the City of Louisville and in various other places in the Commonwealth intermeddling with the election and over-awing voters!

Defendants say that there was an absolute failure to establish it, unless it should be deemed such evidence that it was publicly stated that all persons who shold be guilty of any violations of the Federal laws as to intimidating negro voters or conspiring to prevent them from voting would be prosecuted for such violations of law. And no person could possibly have been or was influences by any such declarations unless he was contemplating the performance of some acts forbidden by law as to the obstruction of negroes in their right to vote.

As to the charge that United States Deputy Marshalls were placed at the voting precincts in the City of Louisville or other cities in the Commonwealth where they intermeddled with the election there was absolutely not a scintilla of evidence to establish the truth of this charge.

No Ground of Contest.

The foregoing are all of the grounds of contest before said Contest Boards and defendants say there as an absolute and complete failure to establish a single ground for declaring or finding or adjudging that the contestants Goebel or Beckham had received the highesy number of legal votes in the State on the said election day, or that they had been then elected respectively to the office of Governor and Lieutenant Governor. And defendants say furthermore that the said Contest Boards did not in fact determine whether or not the votes of any of the counties in which thin ballots were alleged to have been used should be thrown out; and did not in fact determine or attempt to determine how many legal votes either of the defendants had received, or how many legal votes either of the contestants had received. But said committees, acting arbitrarily and tyrannically and fraudulently, and utterly without right and against right, and without any evidence and against the evidence, and because they believed they had the arbitrary power to do what they pleased, simply declared in general terms that the said contestants had respectively received the highest number of legal votes for the respective offices of Governor and Lieutenant Governor.

Defendants say that all of the evidence heard by the said contest committees was by order of said committees taken by a shorthand reporter, to-wit, Mr. Alonzo Walker, and by him afterwards transcribed in twelve volumes of evidence, numbered from one to twelve, both inclusive, and paged consecutively from 1 to 1830, both inclusive, and duplicates of said transcripts of testimony as contained in said twelve volumes are filed herewith and made part hereof marked respectively "Transcript Vol. 1", "Transcript

Vol. 2" &c, to and including "Transcript Vol. 12" an index of said transcript marked "Index of Trafiscript", giving the names of the witnesses and the pages at which their evidence respectively begins is included in Vol. 1. The evidence as set forth in said twelve volumes of transcript is all of the evidence that was heard by the said contest committees.

Legislative Proceedings.

Defendants say that by reason of the intense excitement and angry spirit prevailing at Frankfort on the evening following the wounding of the said contestant Mr. Goebel, and threats of violence were made, and acting upon information conveyed to defendant Taylor, and which he believed to be reliable, he was on January 31st, the day succeeding the wounding of said Goebel, compelled to declare, and he did on that day by virtue of the powers vested in him by the Constitution of the State declare, that a state of insurrection existed at the Capitol of the State, and he did by a proclamation issued by him on that day adjourn the General Assembly, and ordered it to assemble on February 6th 1900 at the town of London in the State of Kentucky. Many of the members of said General Assembly however wilfully disregarded the said action of defendant, who was then the Governor of the State both *de facto* and *de jure*, and announced that they would not go to London, but endeavored to hold meetings in the City of Frankfort, notwithstanding the aforesaid proclamation.

Defendants say it is claimed that a meeting of the two Houses of the General Assembly was held at Frankfort at the Capitol Hotel on the evening of January 31st, 1900, and that at such meeting, which is claimed to have been a joint session of the two houses, the aforesaid reports of the said contest committees were made to a joint session of the two houses of the General Assembly; and that at such joint session the aforesaid reports of the contest committees were made to said joint session and were thereupon approved and adopted by the General Assembly, which thereupon declared William Goebel, Governor, and J. C. W. Beckham, Lieutenant Governor.

But defendants say that no meeting of the General Assembly or of either house thereof, or of both houses thereof, was held at any place on January 31st, 1900, nor was any such report made or adopted by it or either house thereof on that day.

Defendants say furthermore it is claimed by plaintiff and his adherents that again on February 2nd, 1900, the two houses of the General Assembly did again meet at the Capitol hotel in the City of Frankfort; and that again the said reports of said contest committees were approved and adopted and their former action ratified both by said two houses acting separately and also acting jointly.

But defendants say that no session of the General Assembly was held anywhere on February 2nd, 1900, and neither, of the said reports was made to or adopted by the General Assembly on that day either in joint session or separate session. And defendants says that if it be true that any of the members of the Senate of Kentucky attempted to go through the form of holding a session of said Senate at any place on either of said days, there were not more than nineteen members of said Senate present, which did not constitute a majority of the members thereof, and there was therefore not a quorum present, and it could not have held a meeting of the Senate or taken action other than to adjourn, even if the Senate had not been adjourned theretofore by the proclamation heretofore mentioned.

Defendants say it is true that the journals of the House of Representatives and the Senate do purport to show meetings of the General Assembly both on January 31st, and on February 2nd, 1900, but defendants say that the clerks both of the House and Senate are and were then partisan Democrats and followers and adherents of the said William Goebel and the said J. C. W. Beckham, and by collusion between the said clerks and certain Democratic members of the said Houses of the General Assembly, acting with the knowledge and consent and in the interest of plaintiff, and said Goebel, the said journals have been falsely made to show meetings of the said Houses on the days aforesaid and actions by the same on said days, and are therefore not entitled to faith or credit.

Defendants further say that if the said Contest Committees did go through the form of making their aforesaid reports to any number of members of the General Assembly on either of the days aforesaid, and if the said members of the General Assembly did go through the form of adopting said reports, or declaring the contestants, William Goebel and J. C. W. Beckham respectively Governor and Lieutenant Governor of the State, the said reports were not accompanied by any statement of the evidence heard by said committees or the grounds of their action or finding and the said members of the General Assembly, if they acted on said reports, acted without any knowledge of the facts as to said contests, and without considering what the facts were, and without endeavoring to form any judgment upon the merits of the said contests, and without even an opportunity to form such judgment if they had been so disposed, but they acted, if they acted at all purely arbitrarily without knowledge of the facts, and merely because they desired to see these defendants deprived of the offices aforesaid, and to see the said contestants given the said offices, pursuant to the agreement and conspiracy to that effect which had been formed before said contests were heard or determined, as heretofore stated.

And defendants further say that if any such pretended meeting of members of the General Assembly was held either on January 31st or February 2nd, at which any action was taken or attempted to be taken on the reports of said Contest Committees, the said meetings were held secretly, without any notice to any of the Republican members of the General Assembly and without any notice to either of these defendants that such meeting was to be held, and without any opportunity either to the said Republican members or any of them to be present, or any opportunity for either of these defendants to be present at such meeting at which the said contests were to be heard and determined. And if any such meetings were held or attempted to be held on either of those days, and any determination of either of said contests was pretended to have been had, it was utterly void on account of lack of notice, and opportunity to be present or to be heard as just herein stated, as well as for the other reasons heretofore given. And to deprive these defendants or either of them of their offices by such action would be to deprive them of their property without due process of law, and would be to deprice defendants and the other people of the State of Kentucky, and especially the qualified voters thereof, of their political liberty without due process of law, and to deny to them the benefits of a Republican form of government. All of which is contrary to the provisions and guarantys of the Constitution of the United States as well as that of Kentucky.

Defendants further say that heretofore and while the contest over the office of Governor was pending, the aforesaid William Goebel died, and the contest which he had theretofore inauagurated as heretofore stated, did then and there abate.

Defendants further say that subsequent to the death of said Goebel, to-wit, on February 19th, 1900, certain members of the Senate of Kentucky went through the form of adopting a resolution ratifying their alleged proceding action in adopting the reports of said Contest Committees; but the Senate of Kentucky was not in session at the time of the said action of said members thereof, nor presided over by any one having authority to preside over the Senate; and moreover as the preceding pretended action was null and void, and said Goebel was dead, it was therefore not possible by this said last pretended action, even if the Senate had been in session, to give or add any force or effect to said preceding action.

And defendants further say that on the following day, to-wit on February 20th, the House of Representatives of Kentucky also pretended to go through the form of re-adopting and ratifying their alleged preceding action in adopting the said reports of the said contest Committees; and thereafter on the same day certain members of the House and Senate pretended to hold a joint session of the said two Houses in accordance with said joint rule

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No. 11, and pretended again to go through the form of re-adopting and ratifying their alleged preceding action in acopting the reports of said Committees and declaring said Goeble and Beckham respectively Governor and Lieutenant Governor. But defendants say that all of said actions on February 19th and February 20th were and are wholly void and of no effect both for the reasons heretofore given and also for the further reason, and it is a fact, that neither of these defendants was given any notice prior to the pretended actions on February 19th and 20th that the said contests were to be heard on that day or in either of those days, and neither of them was heard or given an opportunity for a hearing either in person or by counsel; and the actions of the said members of the General assembly on those two days were without any regard whatever to the evidence, or knowledge thereof, and without having any evidence before them, no evidence having ever been returned by said contest Boards, and without any consideration of either law or the facts bearing upon said contests, but were simply taken in execution of a tyrannical and fraudulent purpose and pursuant to a previously arranged conspiracy between them and the said Goebel and Beckham, to take the said offices from these defendants who had been elected by the people, and to give them to the said Goebel and Beckham.

Defendants further say that both the offices of Governor and Lieutenant Governor are offices created by the Constitution of Kentucky, and therefore not subject to abolition by the General Assembly of Kentucky. And furthermore it is provided by the Constitution of Kentucky, that "the salaries of public officers shall not be changed during the term for which they were elected," and defendants say they were elected as heretofore shown to the offices of Governor and Lieutenant Governor respectively, of the State of Kentucky on November 7th, 1899, for a period of four years each, and then and thereby became entitled to exercise the functions of said offices and to receive the salaries and emoluments appertaining thereto, which are large and valuable, and were such when they were thus elected; the salary of the Governor being then and now fixed by law at $6500 per annum; and to take from them their said offices and their said salaries and emoluments by the aforesaid action of said contest tribunals, would be to deprive them of their property without due process of law, contrary to the provisions of the Constitution of the United States, and especially of the Fourteenth Amendment thereof.

WHEREFORE these defendants make this their answer a counter-claim against plaintiff J. C. W. Beckham, and pray that his petition be dismissed, and that he be adjudged to be a usurper of or pretender to the office of Governor of Kentucky and Lieytenant Governor and that defendant William S. Taylor be adjudged to be the de facto and de jure Govornor of Kentucky, and defendant John Marshall the de facto and de jure Lieutenant Governor of

Kentucky, and they further pray for their costs herein expended, and for any relief to which they may appear to be entitled.

W. O. Bradley
W. H. Yost
W. H. Sweeney
T. L. Edelen
Augustus E. Willson
Breckenridge & Shelby
Helm, Bruce & Helm,
Attys. for defendants.

The exhibits referred to in said asnwer, and filed therewith, being very voluminous, will be found in separate volumes of this record.

At a Court held on the 2nd day of March, 1900:

This day came the plaintiff, by his attorneys, and filed an amended petition herein.

This day came the defendants, by their attorneys, and filed an amended answer herein.

This day came the plaintiff, by counsel, and filed a demurrer to certain parts of defendants' answer and counter-claim herein.

This day came the plaintiff, by counsel, and on written motion filed, moved the Court to strike out the second paragraph of defendants' answer and counter-claim filed herein and all the words and figures thereof, beginning on the first page thereof with the words, "They deny", and ending on the eighth page thereof with the words, "Of either of the defendants herein."

2—The plaintiff herein in like manner, moves the Court to strike out the entire third paragraph of defendants' answer and counterclaim (numbered 2nd paragraph by mistake) and all the words and figures thereof, beginning on page nine of said answer with the words "Further answering herein" and ending on the last page of said answer and counter-claim with the words "For plaintiff's costs herein expended"; to all of which the defendants object.

This action having been heard in part on said demurrer and on motion and there not being time to complete the argument ordered that this action be passed to March 3rd, 1900, for the completion of said argument.

Said amended petition filed on the 2nd day of March, 1900, is as follows, to-wit:

AMENDED PETITION.

The plaintiff, J. C. W. Beckham, for amendment to his petition herein, avers that on the 31st day of Jan. 1900, William Goebel, who was then a Senator from the 24th Senatorial District of Kentucky, duly elected and qualified as such, resigned in writing his said office, as Senator aforesaid, and the same was duly accepted by the presiding officer of the Senate, and by the senate of Kentucky, in open session, which fact was entered at large upon the Journal of the Senate, an attested copy of which Journal is filed as part of the original petition herein.

The plaintiff further avers that Hon. T. M. Hill, who was elected a Senator from the 25th Senatorial District of Kentucky, on the 7th day of November, 1899, has never been sworn or qualified as such Senator, or at any time appeared in the Kentucky Senate, or entered upon the discharge of his duties, in any manner, as such Senator; that the resignation of said Goebel, as Senator aforesaid was delivered and accepted before the Senate of Kentucky, or the joint session of the Senate and House of Representatives were convened to consider or did, in any manner consider the reports of the contest Boards for Governor, or Lieutenant-Governor, as alleged in the petition herein; but the said matters were all duly considered and acted upon in joint session, and by each House of the General Assembly, separately, after the resignation aforesaid had been received and accepted.

WHEREFORE, plaintiff prays as in his original petition and for all proper relief.

Said amended answer filed on the 2nd day of March, 1900, is as follows, to-wit:

1ST AMENDED ANSWER.

Defendants for amendment to their answer herein, and for answer to amended petition herein say:

They have no knowledge nor information sufficient to form a belief as to whether or not William Goebel resigned in writing his office as Senator on January 31st, 1900, or at any time; and they deny that he did do so, or that any such resignation was duly or at all accepted by the presiding officer of the Senate, or by the Senate.

They say that the Hon. T. M. Hill who was elected a Senator from the 25th Senatorial district has been sworn and qualified as such Senator, and was thussxsworn and qualified prior to January 31st, 1900.

They deny that any resignation of said Goebel as Senator was delivered or accepted before the Senate of Kentucky, or any joint session of the Senate or House, were convened to consider or did consider the reports of the Contest Boards for Governor or Lieutenant.

As to any entries that may be made upon the journals of the House or Senate showing any presentation or acceptance of the resignation of said Goebel, defendants say, as in their original answer herein that a conspiracy was entered into between the clerks of said two houses of the General Assembly, and divers members of the said two Houses to make the journals of said Houses falsely show facts deemed essential to show title in said Goebel and Beckham to the office respectively of Governor and Lieutenant Governor; all of which was with the knowledge and consent and in the interest of said Goebel and Beckham; and said journals are therefore not worthy of faith or credit in any respect.

Defendants for amendment to the third paragraph of the answer say as to the members of the two Houses that were selected to act upon the said Contest Boards, one Newton Frazier, who was thus selected to act upon the Board to try the contest for the office of Governor, and one T. M. Sharp, who was selected to act as one of the members of the Board to try the contest over the office of Lieutenant Governor had, prior the selection of said Boards formed and expressed the unalterable opinion that said Goebel and Beckham should be given the offices of Governor and Lieutenant-Governor, no matter what might be the majority of said Taylor and Marshall. And objections were made, prior to the entering upon the trial of the said contests, against the sitting of these two members of the said two Boards, on the grounds aforesaid, just as such objections were made as to other members, as heretofore alleged in the original answer.

Defendants further say as to the number of days allowed or consumed in the trial of said contests before the Boards of Contest, as mentioned in the original answer, the said Boards only sat six hours a day, so that a day, as referred to in the original answer, means and meant only six hours.

Defendants further say, as to the rejection of votes on the ground that the ballots used were too thin or transparent, that none of said ballots thus rejected, were shown to have been or were in fact returned by the precinct officers as questioned ballots, in the manner required by law; or at all; but were all counted and destroyed on the day of election, with the possible exception of 42 ballots in Knox county which were returned as questioned merely on account of having the name one John

Henry Willson pasted upon them. And defendants further say there was not a scintilla of evidence introduced to show that in any of the counties or precincts in which the alleged thin ballots were used the result of the election was in any wise different from the usual and average results of such elections in said counties and precincts; on the contrary it was affirmatively shown and admitted that the results of the election on November 7th, 1899 were in accord with the ordinary average results of similar elections in the said counties and precincts.

Defendants further say that by the law of Kentucky existing at the time defendant Taylor was elected on Nov. 7th 1899 and still existing the salary of the Governor of Kentucky was fixed at $6500 per annum, payable monthly in equal installments; and in addition to that he was and is now entitled by law to occupy with his family, as a residence for himself and family, a house and grounds in the City of Frankfort provided by the State for such purposes, and which the Governor and his family were by law entitled to occupy free of charge, in addition to receiving the salary aforesaid. And defendants say that said Taylor and his family are now in possession of said mansion and grounds, and have been in possession occupying the same since December 9th, 1899, and are entitled by law to continue to occupy the same as a home and a residence, free of charge or rent of any kind for four years from December 9th, 1899.

WHEREFORE defendants pray as heretofore, and also further pray that the pretended reports, determinations and judgments and each of them of the said alleged contest Boards and of the General Assembly and each house thereof and both Houses thereof, each and all of them be adjudged and declared by this Court to be absolutely null and void, and of no effect, and ordered to be cancelled.

Said demurrer filed on the 2nd day of March, 1900, is as follows, to-wit:

DEMURRER TO ORIGINAL ANSWER.

The plaintiff, J. C. W. Beckham, demurs to the following parts of paragraph 2nd of defendants answer and counterclaim herein, viz:

1—Beginning on first page of paragraph 2nd thereof with the words, "they deny" down to and including the words "Boards of Contest and each of them", on the second page of said answer:

2—Beginning on page 2nd, same paragraph with the words, "defendants deny" down to and including the words "fraudulent and utterly void" on the 3rd page:

3—Beginning on page 3 of same paragraph with the words, "they deny", down to and including the words "as Lieutenant-Governor ceased", on the 5th page.

4—Beginning on page 5. of same paragraph with the words, "they have no knowledge", down to and including the words, "seat of Government" on the 6th page.

5—Beginning on page 6 of same paragraph, with the words, "plaintiffs deny that", down to and including the words "any faith or credit" on the 7th page.

6—Beginning on page 7. of same paragraph, with the words "they deny that by" down to and including the words "either of the defendants herein" at the close of said paragraph on page 8.

7—Beginning on page 9 of 2nd paragraph (so-called by mistake) with the words, "further answering herein", down to and including the words on said page, "trustees these defendants are."

8—Beginning on page 9, same paragraph, with the words, "on November 7th,1899" down to and including the words on page 20th "Signed Wm. Goebel".

9—Beginning with the words, "defendants say" on page 21 same paragraph, down to and including the words, "under the form of law", on page 37th.

10—Beginning with the words "ground of contest", on page 37, same paragraph, down to and including the words, "said contest Committees", on page 49.

11—Beginning with the words, "Legislative proceedings" on page 50, same paragraph, down to and including the words, "State of Kentucky" on page 53.

12—Beginning with the words, "defendants further say" on page 53, same paragraph, down to and including the words "herein expended", at the close of said answer and counterclaim.

For cause of demurrer the said plaintiff says neither of the said parts of the said answer and counterclaim as herein designated, considered separately, or together, constitutes any defense to this action; and of this the plaintiff prays the judgment of the Court.

At a Court held on the 3rd day of March, 1900:

The above action having been heard on the pending demurrer and motion and the Court not being advised, said demurrer and motion are submitted.

At a Court held on the 10th day of March, 1900:

The Court being sufficiently advised delivered a written opinion, which is ordered to be and is now filed and made a part of the record herein, and is as follows, viz:

OPINION.

By consent of parties, these actions are heard together on motion to strike out certain parts of the answer of the defendant W. S. Taylor, and upon demurrers to his answer.

It is alleged in the petition of the plaintiff Beckham that at the election held on the 7th day of November, 1899, in this Commonwealth, William Goebel was the Democratic candidate for the office of Governor and J. C. W. Beckham was the Democratic candidate for Lieutenant-Governor, and in like manner the defendants, William S. Taylor and John Marshall were the Republican candidates for the offices of Governor and Lieutenant-Governor respectively; that thereafter the State Board of Election Commissioners assembled in the city of Frankfort and canvassed the returns from the said election, and determined upon the face of the returns that the defendants, Taylor and Marshall, were elected Governor and Lieutenant-Governor respectively for the term commencing December 12, 1899, and accordingly awarded them certificates showing said facts, whereupon they were sworn and inducted into office. It is further alleged in the petition that within due time after the defendants were awarded certificates of election William Goebel and J. C. W. Beckham gave written notice to the defendants, Taylor and Marshall, that they would contest the election upon the numerous grounds set out at length in the respective notices; that copies of said notices of contest, duly executed, were filed with both houses of the General Assembly, and were entered at large upon the journal of each house, and that thereafter Boards of Contests were duly selected by lot, as required by the statute, to try the contests; that thereafter each of said boards appointed its chairman and assigned a day for hearing, and upon the day so fixed the contestants and contestees appeared, and the contestees each filed defense and counter-notices, and the evidence of contestants and contestees was heard by the board from January 15 to January 29, 1900, inclusive, and on January 30 said contests were submitted without arguments for judgment, by consent, and, the said boards having duly considered the matters of law and fact involved in said contests, did each separately decide the contest submitted to it, and made out in writing the decision of each board; and each of said boards reported its decision to each house of the General Assembly for its action thereon; that in the contest for Governor the Board of Contest determined, adjudged and decided, and so reported to each house of the Gen-

eral Assembly, that William Goebel had received the highest number of legal votes cast for Governor at the general election, and that he was duly elected for the term beginning December 12, 1899, and that the contestant Beckham received the highest number of legal votes cast at said election, and was elected to the office of Lieutenant-Governor for the said term.

It is further alleged that the decisions and reports of the Boards of Contests were thereafter adopted and approved separately by both houses of the General Assembly, at which time there were present nineteen members of the Senate and fifty-six members of the House of Representatives—in all seventy-five members; and all of said members of said houses present as aforesaid voted to adopt and approve, and said houses did then and there adopt and approve said reports of said Contest Boards, separately, and then and there resolved, determined and adjudged that the same be approved, ratified and confirmed, and, further, by resolution, then and there adopted, adjudged and determined that the said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky at the general election on the 7th day of November, 1899, and that J. C. W. Beckham was duly elected Lieutenant-Governor, all of which was duly entered upon the journals of both houses. Copies of the journals of the proceedings of both houses of the General Assembly are filed with and made part of the petition.

It is further alleged that after the contestants, Goebel and Beckham, had been adjudged by the General Assembly to have been duly elected by a majority of the legal votes cast at the election they were duly sworn and inducted into the office of Governor and Lieutenant Governor, respectively, and entered upon the discharge of their duties; that on the 3d day of February, 1900, William Goebel died, and by operation of law the plaintiff, Beckham, became entitled to be inducted into the office of Governor, and upon that day he was so inducted by taking the oath prescribed by the Constitution and laws of this Commonwealth, and that he immediately entered upon the discharge of the duties of his office as Governor and is yet discharging the duties of the office.

It is further alleged that, although the powers and authorities of the defendants, W. S. Taylor and John Marshall, who were filling the positions of Governor and Lieutenant Governor, immediately ceased when the contestants, Goebel and Beckham, were decided to have been elected, yet the defendant, Taylor, has refused, upon demand, to surrender the records, archives, journals and the possession of the Executive office in the Capitol in the city of Frankfort.

The prayer of the petition is that William S. Taylor be adjudged to have usurped the office of Governor and that he be deprived thereof by the judgment of this court; that the plaintiff, Beckham, be adjudged entitled to the said office and that he be placed

in possession thereof, and of the Executive office and of the records, archives, etc., pertaining to the said office.

The answer and counterclaim traverse the material allegations of the petition, and alleges in substance, that the action of the Contesting board, and of the General Assembly, attempting to unseat the contestees, and to seat the contestants, was fraudulently taken, and was the outcome of a conspiracy deliberately entered into by the members of the board, and the members of both houses of the General Assembly who voted to sustain the contest, and by others, to wrongfully and unlawfully unseat the contestees by willfully counting out enough legal votes which had been cast for them, to accomplish that purpose. It is alleged that in the execution of this design the Board of Contest was not fairly drawn by lot from members of the General Assembly, as is required by the statute, but was fraudulently so drawn that a majority of the members of the board were partisans of the contestants, and several of them had previously advised that the contest be made.

It is also alleged, that when the General Assembly first attempted at Frankfort to ratify and approve the action of the Contest Board, it had no power to do so, for the reason that there was not a quorum present, and for the further reason that the Governor had adjourned that body from Frankfort to meet at a subsequent day at London, the county seat of Laurel county.

It is averred in the answer that neither the General Assembly or either House thereof heard evidence touching the grounds of contest, but by the exercise of arbitrary power, and in furtherance of the conspiracy to do so, fraudulently approved the report of the Board of Contes. The prayer of the answer and counterclaim is, that the petition of J. C. W. Beckham be dismissed, and that he be adjudged to be a usurper of, or pretender to the office of Governor of Kentucky, and Lieutenant Governor, and that William S. Taylor be adjudged to be the de facto and de jure Governor of Kentucky, etc.

Section 90 of the Constitution of the Commonwealth of Kentucky is as follows:

"Contested elections for Governor and Lieutenant Governor shall be determined by both houses of the General Assembly, according to such regulations as may be established by law."

This provision was taken literally from our third Constitution.

To provide for the execution of this section of the Constitution, Section 1,531 of the Kentucky Statutes was enacted:

"When the election of a Governor or Lieutenant Governor is contested a board for determining the contest shall be formed in the following manner:

"First—On the third day after the organization of the General Assembly, which meets next after the election, the Senate shall select by lot three of its members, and the House of Representatives shall select by lot eight of its members, and the eleven so

selected shall constitute a board, seven of whom shall have power to act.

"Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election, as provided herein, shall be ordered to fill the vacancy, provided the first two years of his term shall not have expired.

"Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office."

This section of the statute was taken from former editions of our statutes, and has been the law for fifty years. Until recently the report of the Contest Board was final, but by a recent amendment it is provided that the decision of the board shall not be final, but the decision shall be reported to the two houses of the General Assembly, for the future action of the General Assembly, and the General Assembly shall then determine such contest. Kentucky Statutes, 1,596.

It appears from the copies of the journals, and of the proceedings of the General Assembly, filed as exhibits with the petition, that on the 30th day of January, 1900, the Contest Board, selected in conformity with the foregoing statute, to try the contest for the office of Governor, made this report to the General Assembly:

"The undersigned, the board appointed and selected by the General Assembly to determine the contest of the election for the office of Governor of the Commonwealth between William Goebel, contestant, and William S. Taylor, contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion Williamo Gebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor at said election, and we therefore, respectfully suggest that this report be approved and a resolution be adopted by this joint Assembly declaring the said William Goebel Governor-elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes, and is adjudged to be the person elected to said office of Governor for the term prescribed by law."

On the same day the Contest Board for the trial of the contest for the office of Lieutenant Governor made a similar report to the General Assembly, deciding that the contestant Beckham had received the highest number of legal votes for that office.

After these reports were made, and before they could be acted upon by the General Assembly, that body was dispersed by the militia, and their hall occupied by soldiers, but, as is recited in the copies of the journals and proceedings of the General Assembly on file as exhibits in the record, a quorum of each house and of the General Assembly got together and separately and jointly approved the reports.

It will be seen that the Constitution has made the General Assembly the tribunal to try and determine contests of this character, and this question has so often been before our Court of Appeals and other courts of last resort in cases of political contests, that I cannot make the law clearer or convey a better understanding of it than by a liberal quotation from adjudged and reported cases.

The case of Batman vs. Megowan, etc., 1 Met., 538, involved a controversy over the office of Jailer of this (Jefferson) county. The court, through Chief Justice Simpson, said:

"The law has designated the manner in which such questions shall be ascertained and determined. A board is to be constituted as prescribed by the statute, to examine the poll books and issue certificates of election. Another board is to be organized, in the case of a contested election, for determining the contest between the claimants. Upon the last mentioned board the law devolves the duty and confers the power of deciding who is entitled to the office. The courts have no right to adjudicate upon these questions, or to decide such contests. They may by mandamus compel either of the boards to act when it refuses to do so without good cause. This was the object of the proceedings in these consolidated cases, and to this extent only has the judiciary any power to afford relief in cases of contested elections. The decision is made final and conclusive by the statute. By this provision the Ligislature evidently intended to accomplish a two-fold purpose. A speedy and summary mode of deciding cases of contested election, and determining finally and conclusively which one of the claimants was entitled to the office, was very important, and to effect this object the organization of this board was provided for. Another object equally important was to withdraw these contests from the jurisdiction of the courts; and, as was said in Newcum vs. Kirtley (13 B. Mon. 517), 'to prevent the ordinary tribunals of justice from being harassed, and, indeed, overwhelmed with the investigations, and involved in the excitements to which these cases may be expected to give rise.' This object was also effected by making the decisions of this board final and conclusive in all cases of contested elections. From the decisions of this board there is no appeal. Its decisions are final on all questions of both law and fact, which may be involved in the investigation of the rights of the claimants to the office in contest."

The case of Stine vs. Berry (96 Ky., 64) concerned a contest over the office of Mayor of Newport, and upon the subject of jurisdiction the court said:

"It is insisted that the manner of contesting city elections provided by the city charter is merely cumulative and the action in ordinary, in lieu of the writ of quo warranto, may be maintained. We understand, and so adjudge, that the statute in regard to contested elections for State and county offices is exclusive, and that when a mode of contest is provided in a city charter for contesting the election of city officers it excludes any other remedy. Such statutes are enacted with remedies providing for the speedy determination of such questions, and to take from the courts all original supervisory power over such contests."

In the case of the State of Ohio, ex rel., Girell vs. Mailair (15 Ohio St.) it is said upon this subject:

"The State Senate is, as we have said, the statutory tribunal before which a contest in regard to the election of Governor is to be heard and determined. Now, could it have been intended that the solemn finding and determination of that high tribunal upon a question of fact tried before it, should not bind the State as well as all her citizens? That its judgment might be ignored, the question of fact be treated as res integra, and be determined, perhaps differently, by a distinct court, in a proceeding by quo warranto, in any corner of the State? We think not. The peace and order of the community, as well as justice to the individual whose election is contested require that the fact of his election should not be subject to repeated inquiry. To hold otherwise would be to degrade the right of contest in the statutory mode, from that rank which gave it a place in the Constitution, to a nugatory farce."

This case was followed by Stearns vs. Wyoming (53 Ohio St.) to the same eeffct. See also Brooks vs. Baxter (29 Ark., 194).

But it is earnestly insisted by counsel for defendant that the cases of Commonwealth vs. Jones, 10 Bush, 725, and Leeman vs. Hinton, 1st Dur., 37, restrict the Contest Board and decide what matters it may legally consider.

In the first case it was decided in substance that a Contest Board could not convict a man of having accepted a challenge to fight a duel and punish him by depriving him of his office, because as to his guilt or innocence upon a charge of that character the Constitution guaranteed him trial by jury, and in convicting him the board violated his constitutional right.

In Leeman vs. Hinton the court decided that:

"The board for trying contested elections has no authority except, first, to determine whether or not the votes given have been correctly summed up; second, to decide as to the legality of the votes given; third, to decide by lot who is entitled to the office when there is a tie between the candidates receiving the highest

number of legal votes given; and fourth, to decide whether or not the candidate receiving the highest number of legal votes given is qualified to receive the office, and if he is not to order a new election."

But both of these cases were revised in Wilson vs. Hines, 99 Ky., 227, and it is there said:

"The second objection is equally untenable. In support of it counsel refer to the cases of Leeman vs. Hinton, 1 Duvall, 40, and Commonwealth vs. Jones, 10 Bush, 789, as showing that the Contesting Board was restricted in the performance of its functions under the statute. But on examining these cases it will be found that it is held that the boards are restricted as to the methods by which, or the evidence upon which, they may decide questions before them rather than as to the questions they are allowed to decide. And we hold that under the law they are clothed with force and authority to consider and decide upon any matter or thing that is a lawful ground of contest, unless restricted by the statute which prescribes their authority and jurisdiction."

But it is earnestly urged a great fraud has been committed by the Contest Board, and the General Assembly participated in that fraud, both before and after the fact, by conspiring in advance with the board to unseat the contestees and by ratifying and approving the report made in compliance with the terms of the unlawful agreement. All this may be true, but here again we are met by an unbroken line of authority, in Kentucky and elsewhere, which forbids the judiciary to investigate the motives or the purpose with which an act of a co-ordinate branch was done, whether it be done by the legislative or executive.

Judge Cooley on Constitutional Limitations, 220, says:

"From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power, that is, a question whether the Legislature in the particular case, in respect to the subject matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative, the courts are not at liberty to inquire into the proper exercise of power. They must assume that the legislative discretion has been properly exercised. If evidence is required, it must be supposed that it was before the Legislature when the act was passed; and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding. And although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the Legislature where fraud and corruption were alleged, and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed

the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the Governor in the exercise of a discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people."

In the case of Lafferty vs. Huffman, 99 Ky., 91, the Court of Appeals passed upon this question, and quoted from a case decided by the Supreme Court of Indiana, the quotation and opinion of the Kentucky court being pertinent to this matter:

"It is said, however, that such a conclusion results in leaving the legislative department free to nullify the plain provisions of the Constitution, and refuse to comply with the formalities required by that instrument in the enactment of the laws. If this is true, it does not follow that the courts may interfere with the processess of the legislative in that respect. If that department fails or refuses to do the bidding of the Constitution, it is responsible to the people and not to the courts. Besides, an assumption that it will so fail or refuse is not to be made the basis of judicial action. To the argument that if the unauthenticated roll is conclusive upon the courts, then less than a quorum of each house may, by the aid of corrupt presiding officers, impose laws upon the State in defiance of the inhibition of the Constitution, the Supreme Court of Indiana, in Graves vs. Brown, 30 Ind., 514, responded thus; 'It must be admitted that the consequence stated would be possible. Public authority and political power must of necessity be confided to officers, who, being human, may violate the trusts reposed in them.'

"This, perhaps, cannot be avoided absolutely, but it applies also to all human agencies. It is not fit that the judiciary should claim for itself a purity beyond others, nor has it been able at all times with truth to say that its high places have not been disgraced. The framers of our government have not constituted it with faculties to supervise co-ordinate departments and correct or prevent abuse of their authority. It cannot authenticate a statute. That power does not belong to it, nor can it keep the legislative journal. It ascertains the statute law by looking at its authentication, and then its function is merely to expound and administer it. Nor is there any great force in the argument which seems to be regarded as of weight by some American courts, that some important provision of the Constitution would be a dead letter if inquiry may not be made beyond the rolls. The argument overlooks the fact that legislators are sworn to support the Constitution, or else it assumes that they will willfully violate that oath. It is neither modest nor just for Judges thus to impeach the integrity of another department of Government, and to claim that the judiciary only will be faithful to its obligation. From every point of reason, therefore, we are convinced that the enrolled bill, when attested by the presiding officers as the law requires, must be

accepted by the courts as the very bill adopted by the Legislature, and that its mode of enactment was in conformity to all constitutional requirements. When so authenticated it imports absolute verity and is unimpeachable by the journals."

The opinion of the Supreme Court of New Jersey, in the case of Pangbaum vs. Young, 32 N. J., 40, so clearly states the relations of the judicial and legislative branches to each other that I cannot forbear to again quote:

"In addition to the foregoing observations I cannot close this part of my examination of the question under discussion without adverting to a further consideration, which, to my mind, appears to be entitled to very great if not decisive weight. I here allude to the circumstance that, in the structure of the government of this State, the judicial and legislative departments are made co-equal, and that it nowhere appears that the one has the right of supervision over the other. It is true, as was much pressed on the argument, that the legislative branch may willfully infringe constitutional prescriptions. But the capacity to abuse power is a defect inherent in every human government, and yet, nevertheless, the forces of government must be reposed in some hands. The prerogative to make, to execute and to expound the laws must reside somewhere. Depositories of these great national trusts must be found, though it is certain that such depositories may betray the confidence thus reposed in them. In the frame of our State Government the recipients and organs of this threefold power are the Legislature, the Executive and judiciary, and they are co-ordinate—in all things equal and independent; each, within its sphere, is the trusted agent of the public. With what propriety, then, is is it claimed that the judicial branch can erect itself into the custodian of the good faith of the legislative department? It is to be borne in mind that the point now touched does not relate to the capacity to pronounce a law, which is admitted to have been enacted, void, by reason of unconstitutionality. That is clearly a function of judicature. But the proposition is whether, when the Legislature has certified to a mere matter of fact, relating to its own conduct and within its own conizance, the courts of the State are at liberty to inquire into or dispute the veracity of that certificate. I can discover nothing in the provisions of the Constitution, or in the general principles of government, which will justify the assumption of such superior authority."

The line of authority to the effect that the courts cannot inquire into the motives which induced the action of the Legislature is unbroken and must be taken as the law.

Copies of all the doings of the Board of Contest and of the General Assembly touching this matter, as they appear upon the legislative records, duly certified by the proper officer, are in the record as part of the pleadings.

I have preferred to answer the arguments of the learned and earnest counsel for the defendants, Taylor and Marshall, by decided cases gathered from different States and decided at various times.

To the argument that there was no quorum when the General Assembly approved the report of the Contest Board and that it had been adjourned the foregoing authorities say the statement of the legislative records that there was then a quorum is sufficient.

To the contention so earnestly and eloquently made that the action of the Contest Board and of the General Assembly in approving the report of that board was an act of arbitrary power and in violation of the Bill of Rights, the answer must be that the report recites that the board heard the evidence of both parties; that it was acting within the jurisdiction given it, and to it alone, and the power to hear and determine must of necessity rest somewhere.

It is further insisted by counsel that under the law the election of a Governor is by the voters of the whole State, and that if the votes of a material number, from whatever cause, are thrown out, then there has been no election, and it should be declared void. The difficulties in that direction are that neither party claims the election was void, nor asks to have it adjudged void, but each claims he was legally elected. Moreover, these actions are being heard on demurrer, not on the merits.

The report of the Contest Board does not indicate upon which nor how many of the contestants' grounds of contest it acted; whether upon the alleged tissue ballots or military interference or other of the numerous grounds specified, and I am not permitted upon this hearing to look into the evidence; but if each party has sustained by proof the charges of fraud made against the other in the pleadings, and this were a proper place for the application of that principle I would hold them to be in peri delicto as violators of the law and refuse to aid either of them.

The motion to strike from the answer and the demurrer thereto must be sustained. EMMET FIELD, Judge.

At a Court held on the 16th day of March, 1900:

This day came the defendants, by counsel, and filed their second amended answer and counter-claim herein, which is as follows, viz:

2ND AMENDED ANSWER.

Defendants for further amendment to their answer and counter-claim herein say they have no knowledge nor information sufficient to form a belief as to whether or not the plaintiff J. C. W. Beckham was on November 7th, 1899, or is now as much as thirty years of age, or as to what his age then was or now is.

Par. 2. As to the proclamation of defendant Taylor as Governor adjourning the Legislature from Frankfort to London defendants furthere say that at the time of the said proclamation the aforesaid William Goebel had just been shot; that the most intense exvitement prevailed in the City of Frankfort, that threats of blowing up the public buildings and taking human life were being freely made, public peace was threatened and a general state of confusion, insurrection and danger to life and property existed in the City of Frankfort.

And further, with reference to the charge in the notices of contest, as to the use of the military in the City of Louisville defendants say that the Governor of Kentucky was and is the chief officer ofthe State, and it was shown without contradiction in the evidence introduced before the said Contest Tribunals trying the contests as to the offices of Governor and Lieutenant Governor, and it was and is true that the Governor did not place the State guard or any part thereof in the Armory, or assume to direct their movements until a number of addidavits had been filed before him showing that the local peace officers could not be trusted to take charge of said military, and it was further shown in said evidence, and is true that on several elections in the City of Louisville prior to the election of November 7th, 1899, numbers of the said military had been placed in the Armory of said City with gatling guns and cannon, and under the charge of a Colonel in commandwho was a Democrat.

Further defendants say as to the objection to Messrs. Hickman, Finn, Lyon, Rennick, Sharp, Crawford and Holland as members of the Boards of Contest, they being members of the House of Representatives, and as to the objections to Messrs. Allen, Crenshaw, and Harrell as members of the Boards of Contest they being members of the Senate, the objections to the competency or fitness of said members was not only made before the said Boards of Contest and supported by affidavits filed before said Boards as alleged in the original answer herein, but said objections were also made to the said members before the respective Houses of the General Assembly of which they were members, supported by affidavits filed before said Houses showing the grounds of said objections, which grounds were stated in the original answer, all of which was done before the trials were begun, before said Boards of Contest; but said Houses of the General Assembly and each of them failed and refused to act upon the said objections or any of them, but allowed the said members and all of them to continue to act, and they did continue to act upon the said Boards of Contest notwithstanding the objections to their competency.

Further as to the actions of the said Boards of Contest, defendants say that by the rules adopted by the said Boards of Contest the taking of proof by depositions was prohibited, and all testimony was required to be produced orally before the Boards, and thus

defendants were prevented from securing a large amount of testimony of a material and valuable character to them which could have been taken by means of depositions of witnesses who could not be produced before the Board; and furthermore, by the said rules, the defendannts were thus compelled to bring, and they did bring a very large number of witnesses, several hundred of them, to the City of Frankfort for the purpose of testifying orally before the said Boards, thus bringing by necessity to said City a large number of men who are refered to by plaintiff, but untruly referred to, as a body of lawless men.

And further defendants say that at the conclusion of the testimony of the contestees before the Boards of Contest the contestants were allowed by said Boards to introduce testimony in chief under the guise of rebuttal testimony, but which was not in fact such, and which was false, and when the contestants asked for permission—which they did ask—to introduce witnesses to contradict this new testimony, which they could have done, their said request was refused by the said Boards, except that they consented that one witness, who happened to be present with the contestants when the said testimony was given, might be introduced, although contestants asked leave to introduce as witnesses a number of persons who had been named by the said witnesses testifying in pretended rebuttal as having been present when the alleged matters occurred to which they testified, but which request was refused by the said Boards of Contest.

In further explanation of the exhibit filed with the answer marked Exhibit A, being the printed copy of the counter-notice of defendant, Taylor, before the boards of Contest, defendants say that the action of the Board of Contest on motions to strike out parts of said counter-notice and on demurrers thereto, is shown by marks and letters on the margin of said counter-notice, the part demurred to or moved to be stricken out being shown in each instance by a line drawn along the margin of the same, the letters "M. S." meaning that as to the portion so marked the motion to strike out was sustained; the letters "D. S" meaning that as to the portion so marked a demurrer thereto was sustained; the letters "M. O" meaning as to the part so marked the motion to strike out was overruled; and the letters "D. O" meaning that as to the part so marked the demurrer thereto was overruled.

Defendants say that the power vested in the Houses of the General Assembly of Kentucky to try contests over elections of Governor or Lieutenant Governor is judicial in its nature, and is subject to the same limitations and restrictions to which the exercise of judicial power is ordinarily subject; that by the Constitution of the State of Kentucky and also by the Constitution of the United States, especially the fifth and fourteenth amendments thereof, the exercise of absolute and arbitrary power by the State or any department thereof, whereby any person shall be deprived

of life, liberty, property, or the pursuit of happiness, including therein the enjoyment of honors and the occupation of positions of public trust and emolument is forbidden. But defendants say that if effect be given to the alleged decisions by the said Boatds of Contest or the said Houses of the General Assembly as to said contested elections for Governor or Lieutenant Governor; and these defendants be thereby deprived of the offices of Governor or Lieutenant Governor, and the plaintiff Beckham be thereby vested with the power of Governor of Kentucky, then not only will the people of Kentucky be deprived of their political liberty without due process of law, but these defendants will also be deprived without due process of law of the right to hold the said offices of Governor and Lieutenant Governor, which are both profitable and honorable, all of which is contrary to and forbidden by both the provisions of the State Constitution and of the Constitution of the United States above referred to, and defendants say that if by a proper construction of the Constitution of Kentucky the absolute and arbitrary power is giveneither to the Boards of Contest or to the Houses of the General Assembly to take from these defendants the offices of honor, trust and emolument to which they were elected by the people of the State as heretofore alleged, under the false guise of a trial of a contest over said offices, then the said Constitution of the State is itself contrary to the aforesaid provisions of the Constitution of the United States.

Wherefore defendants pray as heretofore.

At a Court held on the 19th day of March, 1900:

This day came the plaintiff, J. C. W. Beckham, by counsel, and filed a demurrer to certain parts of the first amended answer herein.

Came said plaintiff and also moved the Court to strike out certain parts of the first amended answer herein.

Came the plaintiff, by counsel, and filed a demurrer to the second amendment to the answer and counterclaim of the defendants, W. S. Taylor and others.

Came the plaintiff, by counsel, and on written motion filed, moved the Court to strike from the second amendment to the answer and counter-claim of the defendants, W. S. Taylor, and others, which was filed herein on March 16th, 1900, each and all of the words and figures contained in the second paragraph thereof beginning with the words "As to proclamation of the defendant Taylor as Governor", on the first page thereof, and ending with the words "provisions of the Constitution of the United States" on the fifth page thereof.

Came the plaintiff by counsel and filed a reply to the answer and counterclaim filed herein February 27th, 1900.

By consent and agreement of parties herein, by counsel, it is ordered that all the demurrers and motionsfiled herein of this date be and are submitted.

Said demurrer and motion to strike out filed to certain parts of the first amended answer on March 19th, 1900, is as follows, to wit:

DEMURRER AND MOTION TO STRIKE OUT AS TO 1ST AMENDED ANSWER.

1—The plaintiff, J. C. W. Beckham, demurs to the following parts of the first amended answer filed herein and moves the Court to strike out parts of said amended answer, viz:

All that part beginning on page 1st of said amended answer, in line 3rd, with the words, "they have no knowledge," down to and including the words, "or by the Senate," in the 7th and 8th lines thereof.

All that part thereof beginning with the words, "they deny that any resignation," in the 13th line of the 1st page down to the close of said amended answer on page 3rd thereof.

Because they say that the said parts of said amended answer are not sufficient in law and are irrelevant and immaterial: And of this they pray the judgment of the Court.

Said demurrer to the second amendment to the answer and counterclaim of Taylor, etc., filed on the 19th day of March, 1900, is as follows, to-wit:

GENERAL DEMURRER AS TO 2ND AMENDED ANSWER.

Comes the plaintiff J. C. W. Beckham, and demurs generally to the second paragraph of the second amendment to the answer and counter-claim of the defendants, W. S. Taylor and others, and for grounds says that the same does not state facts sufficient to constitute or support a defense herein.

ORDER.

At a court held on the 22nd day of March, 1900.

I.

The demurrer of plaintiff to the answer and counterclaim herein is sustained to the following parts of the *second* paragraph of the said original answer and counter-claim filed herein by defendants, viz:

"They deny that on the day named in the pleading or at all the Senate of Kentucky did by lot or at all select three of its members to act as members of the Board of Contest for the trial of the contest of the office of Governor of this Commonwealth; or did, by lot or at all select three of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant Governor of this Commonwealth; or that the House of Representatives of said General Assembly did by lot or at all select eight of its members to act upon the Board of Contest of the trial of the contest for the office of Governor; or did by lot or at all select eight of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant Governor.

"They admit that the said Senate and House of Representatives did upon the day named in the pleading pretend to select by lot members of the said respective bodies to act upon the said respective Boards of Contest. But defendants say that the pretended selection was not in fact by lot, but was conducted by means of a fraudulent arrangement, the exact nature of which these defendants are not liable to state, by means of which it was known in advance of the pretended selection to the contestants, William Goebel and J. C. W. Beckham and their friends and managers, who would be the persons selected as members of said Boards, or at least, it was known to said parties, in advance of said apparent selection, what would be the political beliefs of the persons to be thus selected, and what their feelings and inclinations and desires upon the subject of the contests to be tried by them, and knew they would be the partisan friends and followers of said contestants. And said pretended selections by the House and by the Senate were fraudulent and utterly void, as were all of the subsequent proceedings of said pretended Boards of Contest and each of them.

"Plaintiffs deny that on January 30th, 1900, or at any time, they or either of them consented to submit said contests to said Boards for judgment without argument. The truth as to said subject will be stated in a subsequent paragraph hereof.

"They deny that said Boards or either of them duly or at all considereed either the matters of law or the facts involved in said contests, or that they did separately or at all decide the contests submitted to them; although they admit that the said Boards did go through the form, and make a pretense of deciding the said contests, and did make out in writing their pretended decisions, which, however were fradulent and utterly void.

"They deny that on the day of January, 1900 or at any time each of said Boards or either of them reported its decision to each or either House of the General Assembly.

"The admit that in the contest for Governor the Board of Contest pretended to determine, adjudge and decide that the contestant for the office of Governor was duly elected Governor for the term beginning December 12th, 1899, and that he had received the highest number of legal votes cast at said election, and was entitled to said office; and that in like manner the Board of Contest for the office of Lieutenant Governor did pretend to decide, adjudge and determine that the plaintiff, J. C. W. Beckham, contestant for the office of Lieutenant Governor, was duly elected to that office and had received the highest number of legal votes, and was entitled to said office; but they say that said pretended decisions were fradulent and utterly void.

"They deny that the said decisions or reports or either of them were thereafter adopted or approved by both houses of the General Assembly in joint assembly. They deny that at the time of said pretended adoption of said reports nineteen members of the Senate constituted a majority of the members of the Senate. They have no knowledge or information sufficient to form a belief as to whether or not all of the members of said houses who may have been present at any secret meeting of said members voted to adopt or approve the aforesaid alleged reports of said Contest Boards, or as to what members were thus present, or as to who voted, or how they voted.

"They deny that said Houses or either of them adopted, adjudged or determined that William Goebel was duly or legally elected Governor of the Commonwealth of Kentucky at the election on the 7th day of November, 1899, or that he had then or there received the highest number of legal votes cast at said election, or was entitled to said office of Governor; or that said Houses or either of them decided, adjudged or determined that the plaintiff, J. C. W. Beckham was duly or legally or at all elected Lieutenant Governor of the Commonwealth, or as such entitled to the said office, or that he had received the highest number of legal votes cast thereat.

They say it is true that the pretended determination, judgment and decisions of said Houses in joint assembly was entered upon the journals of each House thereof. But they say that said entries were made by the Clerks of said Houses who were friends and

partisan followers of the contestants in the execution of a conspiracy between said clerks and other friends and followers of said contestants who were members of the General Assembly, the object and purpose of which conspiracy was to make the records of said two Houses falsely show that there had been meetings of the said two Houses, and that the said reports of said Contest Boards had been presented and adopted by said Houses at such meetings. And said entries are untrue and void and not entitled to any faith or credit.

"They deny that subsequent to the aforesaid pretended joint session the said Houses or either of them met separately and considered or approved the said reports and findings or any of them, or adjudged or determined that William Goebel was duly or legally or at all elected to the office of Governor or entitled to the same, or that he had received the highest number of legal votes cast at said election; or that J. C. W. Beckham was duly elected to or entitled to the office of Lieutenant Governor, or had received the highest number of legal votes cast at said election. And they deny that at the time of said pretended action by said Houses separately nineteen Senators were a majority of the members of the Senate.

"They admit that the said pretended determination and decisions of said two Houses acting separately were entered upon the journals thereof by the clerks thereof; but they say that such entries were false and fraudulent, and made pursuant to the conspiracy heretofore mentioned, and for the purposes heretofore explained, and are entitled to no faith or credit.

"They deny that upon the alleged adjudication or determination by said Houses of the General Assembly all or any of the powers or authority of William S. Taylor, as Governor ceased, or that thereupon all or any of the powers of the defendant John S. Marshall as Lieutenant Governor ceased.

"He admits that he did on January 31st, 1900 refuse to permit the members of the General Assembly from meeting as the General Assembly in Frankfort, but says this was solely because he had previously in the exercise of his lawful authority as Governor adjourn the said General Assembly to meet on February 6th, 1900, in the town of London, Kentucky. He denies that his action in adjourning said General Assembly was unlawful, wrongful or corrupt, or for any corrupt or unlawful purpose.

"He denies that the General Assembly adjourned on the day of February, 1900 or at any time to the City of Louisville; or that it ever held any sessions in the City of Louisville or that it ever adjourned from the City of Louisville back to the seat of government, though plaintiffs admit that some of the members of said General Assembly did go through the void form of pretending to adjourn to Louisville and to meet in session at Louisville and then to adjourn back to the seat of Government.

"Plaintiffs deny that on February 19th, 1900, or at any time the Senate of Kentucky adopted the resolution alleged to have been adopted on that day; or that on the 20th day of February, or at any time, the House of Representatives or the General of Kentucky in joint session adopted said resolution; or that by the adoption of any such resolution any former action of the General Assembly was ratified or re-affirmed.

"They admit that said pretended acts of ratification and adoption were entered upon the journals of the said two Houses; but they say that said entries are false and fraudulent and were made in execution of the conspiracy heretofore mentioned, and for the purposes heretofore mentioned, and are not entitled to any faith or credit.

"They deny that by any determination or adjudication of the General Assembly the powers of defendant Taylor as Governor have ever ceased. They deny that his possession of the records, archives and papers pertaining to the office of Governor, or his possession of the buildings of the State is unlawful or wrongful; or that he maintained such possession with any force of lawless men; or that he is usurping the office of Governor of the Commonwealth.

"They deny that by the decision of said Boards of Contest in the office of Governor or Lieutenant Governor, William Goebel became or was Governor; or that the defendant, J. C. W. Beckham became or was Lieutenant Governor; or that upon the death of said Goebel the defendant Backham became entitled to or it was his duty to exercise all or any of the power and authority pertaining to the office of Governor. They deny that he was duly or at all inducted into said office; or is now entitled to the possession of any of the records, archives, journals or papers, or the possession of the Executive offices in the Capitol in the City of Frankfort."

The said demurrer is sustained as to the entire *third* paragraph of the said answer and counter-claim, except as to the following words: "Defendants further say that heretofore and while the contest over the office of Governor was pending, the aforesaid William Goebel died, and the contest which he had theretofore inaugurated as heretofore stated, did then and there abate."

The defendants, William S. Taylor and John Marshall, except to the foregoing order.

The demurrer as to the remainder of said answer and counter claim is overruled. The defendants are given leave to amend the said answer and counter-claim, if they shall desire to do so.

This order is by consent of all parties entered now as of March 12th 1900.

II.

Plaintiff Beckham having heretofore filed a general demurrer to the whole of the first amended answer filed herein, to wit, on March 2nd, 1900, except the following words therein, to wit:

"They say that the Honorable T. M. Hill who was elected a Senator from the Twenty-Fifth Senatorial District has been sworn and qualified as such Senator, and was thus sworn and qualified prior to January 31st 1900."

And having also moved the Court to strike out from said amended answer all the portions thus demurred to,

By consent of all parties it is ordered that the order entered filing said demurrer and making said motion be and they are considered as entered as of March 2nd 1900.

And the Court being sufficiently advised it is considered that said demurrer be and it is hereby sustained; to which defendants except.

III.

Plaintiff having filed a general demurrer to the second paragraph of the second amended answer filed herein, to wit, on March 16th, 1900, and also entered a motion to strike out said second paragraph; to which defandants objected. And the Court being sufficiently advised it is considered by the Court that said demurrer be and it is hereby sustained; to which the defendants excepted.

IV.

Then came the parties further and filed herein an agreed copy of a stipulation as to the prosecution of this and other causes, which is as follows, viz:

STIPULATION.

There are now pending in the Jefferson Circuit Court, two suits entitled respectively, W. S. Taylor v. J. C. W. Beckham, &c. and John Marshall v. J. C. W. Beckham, &c; and another suit in the name of J. C. W. Beckham vs. W. S. Taylor and John Marshall is to be filed in said Court.

Process has been served in the first named two suits and the defendants agree at once to enter their appearance in the last named suit. All of said suits are to be placed upon the ordinary docket and tried by the Court on the law and facts.

One answer and subsequent pleadings in the two first named suits may be filed and applied to both those cases, they to be consolidated.

The same evidence shall be heard in all the cases, the three cases being tried and heard together.

The pleadings shall be made up by Tuesday, February 27th, 1900, or sooner if it can be done.

The evidence shall be by depositions or record, unless otherwise agreed upon, and shall be taken as soon as possible, say within ten days from the time the pleadings are closed.

In the preparation of said cases in the Circuit Court, all parties, agree, in good faith, to do all they can to speed the final determination of the cases on their merits, and it is hereby agreed that should any party desire to introduce in evidence the proceedings of the contest boards or of the Gen. Assem. such party may use, as evidence, copies of the transcript of such proceedings and evidence furnished the counsel by Alonzo Walker, the official stenographer, for said contest boards, the necessity for havingsuch transcripts attested or certified being hereby waived; but nothing herein shall be construed, to waive any objection to relevancy and competency of any and all evidence introduced or offered on the trial of the said cases.

When the said causes shall have been finally determined in the Circuit Court, then if either party shall desire, to appeal to the Court of Appeals, it is hereby agreed that all parties hereto, will unite in a request, to the said court, to docket said cases immediately and advance them for hearing, to the earliest day, upon which the court can hear them.

It is further agreed that on such appeal the original evidence used in the Circuit Court, if voluminous, may be taken to the Court of Appeals, as part of the record on the appeals, without being copied, thus saving both time and cost.

Should any party after the final determination of the causes by the Court of Appeals, desire a writ of error, from the Supreme Court of the U. S. to review such determination, it is agreed that such writ shall be immediately applied for, and diligently prosecuted if secured and that all parties to said causes, will unite in an application to said Supreme Court to docket and advance said causes and to give them the earliest hearing and determination possible.

The said causes shall be tried in the Jefferson Circuit Court, by Judge Emmet Field, before whom one of the said causes is now pending.

It is further agreed by the parties to the said suits that they will submit to and abide by all the orders and judgments of the courts, made in said suits, reserving however the legal right to stay proceedings on such orders or judgments in any manner provided by law. Feb. 21, 1900.

W. S. Taylor
John Marshall
by Wm. H. Yost and Helm Bruce } Attys.

J. C. W. Beckham
L. H. Carter
John B. Castleman
by Lewis McQuown John K. Hendrick } Attys.

Said reply filed March 19th, 1900, is as follows, to-wit:

REPLY.

Comes the plaintiff in action 24251, J. C. W. Beckham, and for reply to so much of the answer and counter-claim filed herein on Feb. 27th, 1900 as he is advised it is necessary; denies that heretofore while the contest over the office of Governor was pending William Goebel died; and denies that the contest which he had theretofore inaugurated did then or there abate; and denies that William Goebel died while said contest was pending. Admits that he died but alleges that it was after the contest had ended.

WHEREFORE, they pray as in their original petition and for all proper and general relief.

At a court held on March 3, 1900 the court entered the following order

JEFFERSON CIRCUIT COURT.

J. C. W. Beckham, Plaintiff
vs. ORDER
W. S. Taylor, etc. Defendants
W. S. Taylor, etc. Plaintiffs
vs.
J. C. W. Beckham, etc. Defendants

This day came all of the parties to the above entitled causes and by consent it is ordered that said causes be heard together, and upon the same evidence.

At a court held on March 24, 1900 the court entered the following order

JEFFERSON CIRCUIT COURT
Common Pleas Division

J. C. W. Beckham Plaintiff
vs. MOTION AND ORDER.
W. S. Taylor, &c Defendant
W. S. Taylor &c Plff
vs.
J. C. W. Beckham &c Deft.

This day came the parties to the above entitled causes, by counsel, and waived the setting of the same at rules; and thereupon the same were submitted to the Court for determination upon

the law and facts, without the intervention of a jury; and W. S. Taylor and John Marshall moved the Court to state in writing the conclusions of fact found, separately from the conclusions of law.

Thereupon it was agreed by all parties to the action that the Court might, if it should so desire, simply adopt its written opinion heretofore filed herein as its statement of its conclusions of law, and might state its conclusions of fact in the judgment; and that the parties might in the judgment enter and reserve their exceptions to such conclusions of law and fact with the same effect as if there had been a separation of conclusions of law and fact and exceptions entered thereto prior to or separately from the judgment.

At a court held on March 24, 1900, the following judgment was entered, viz:

JEFFERSON CIRCUIT COURT

Common Pleas Division

J. C. W. Beckham — Plaintiff
vs. No. 24251
W. S. Taylor, &c — Defendants

W. S. Taylor, &c — Plaintiffs
vs. No. 24187
J. C. W. Beckham, &c — Defendants

JUDGMENT.

These actions having been submitted to the court for judgment upon the entire record herein, and the court being sufficiently advised, it is considered and adjudged by the court, as follows, to-wit:

First. The court hereby adopts its written opinion heretofore filed herein as a statement of conclusions of law in this action; to which conclusions William S. Taylor and John Marshall except.

Second. William Goebel and J. C. W. Beckham inaugurated a contest for the offices of Governor and Lieutenant Governor respectively before the General Assembly of Kentucky on the 2d day of January, 1900, against William S. Taylor and John Marshall, and the said contest were finally determined by the General Assembly on the 2d day of February, 1900, at which time it was adjudged and determined by each House of said General Assembly, acting separately and also in joint session, that the said William Goebel was duly elected Governor of the Commonwealth of Kentucky for the term beginning December 13, 1899, and was entitled to said office of Governor, and it was then and there in like manner determined by said General Assembly and by each House

acting separately and in joint session that the said J. C. W. Beckham was duly elected Lieutenant Governor of said Commonwealth for the same term.

Third. Immediately after the said determination the oath of office of Governor as provided by law was administered to said Goebel, February 2, 1900, and the oath of office as Lieutenant Governor as provided by law, was in like manner administered to J. C. W. Beckham.

Fourth. Said William Goebel died on the 3d day of February, at 6:45 p. m., and shortly thereafter upon said day J. C. W. Beckham as Lieutenant Governor was sworn as required by law to discharge the duties of the office of Governor of the Commonwealth.

To all of the foregoing conclusions in the second, third and fourth paragraphs of this judgment said Taylor and Marshall except.

Fifth. J. C. W. Beckham was born on the 5th day of August, 1859.

The court doth now, therefore, adjudge that the defendant, William S. Taylor, has usurped and is now usurping the office of Governor of this Commonwealth, and that he be and is hereby deprived thereof and is adjudged to have no right or title whatever to said office or to the possession or use thereof.

It is further adjudged that the plaintiff, J. C. W. Beckham, is the duly elected and legally qualified Lieutenant Governor of the Commonwealth of Kentucky, and as such is entitled to the full possession of the office of Governor from December 13, 1899, until another be duly elected and qualified and is also entitled to the immediate possession of the Executive offices provided by the Commonwealth for the use of the Governor located at Frankfort, Ky., in the Capitol building, as well as all of the records, archives, books, papers, journals and other things pertaining to the said office; and it is now adjudged and ordered that the said office, books, papers, archives and journals shall be immediately surrendered by the said Taylor and delivered to the said J. C. W. Beckham.

It is further adjudged that the plaintiff, J. C. W. Beckham, recover of the defendants, W. S. Taylor and John Marshall, his costs herein expended, for which he may have execution.

It is further adjudged that the defendant, L. H. Carter, was duly and regularly elected as President of the Senate of the State of Kentucky, after J. C. W. Beckham qualified and entered upon the discharge of his duties as Governor, aforesaid, and that as such President he is entitled to exercise and discharge the duties of said office of Lieutenant Governor for the time being, as provided by law.

It is now, therefore, further ordered and adjudged that the defendant, John Marshall, has usurped the office of Lieutenant Governor, and that he is hereby deprived thereof, and that said

L. R. Carter is entitled to the full possession of said office of Lieutenant Governor, and of all the records, books, papers, journals and other things pertaining to said office, and that the same shall be immediately surrendered by the said John Marshall unto the said L. H. Carter.

It is further adjudged that the said L. H. Carter recover his costs herein expended against the said John Marshall and William S. Taylor, and may have execution therefor.

The court doth now order and adjudge that the petitions and counter-claims of William S. Taylor and John Marshall herein be and the same are hereby dismissed.

To the judgment of the court aforesaid and the conclusions of law and fact therein the said William S. Taylor and John Marshall, by counsel, objected and excepted, and still object and except, and pray an appeal to the Court of Appeals, which is granted.

On March 24, 1900, the following motion was entered and grounds filed upon which the following order was entered viz:

J. C. W. Beckham	Plaintiff
vs.	
William S. Taylor, &c	Defendants
William S. Taylor, &c	Plaintiffs
vs.	
J. C. W. Beckham	Defendant

William S. Taylor and John Marshall move the Court to set aside the judgment herein on the following grounds, to wit:

1. The Court erred in the conclusions of law and each of them as stated in its written opinion filed herein, and which is adopted in its judgment herein; and erred particularly in holding that the journals of the Senate and House of Representatives are absolutely conclusive of the truth and not subject to attack even for fraud, and that the determination of the General Assembly, as shown by said journals, cannot be attacked upon any ground.

2. The finding of the Court to the effect that the contest by William Goebel and J. C. W. Beckham against William S. Taylor and John Marshall over the office of Governor or Lieutenant Governor, or either of them, were finally determined by the General Assembly on the 2nd day of February, 1900, is not sustained by sufficient evidence and is contrary to law.

3. The finding of the Court that on the day aforesaid, to wit, February 2nd, 1900, it was adjudged and determined by each House of said General Assembly acting separately, or in joint session, that William Goebel was duly elected Governor of the Commonwealth, or entitled to said office, or that J. C. W. Beckham was duly elected Lieutenant Governor, is not sustained by sufficient evidence and is contrary to law.

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4. The finding of the Court to the effect that William S. Taylor is a usurper of the office of Governor, or that John Marshall is a usurper of the office of Lieutenant Governor is not sustained by sufficient evidence, and is contrary to law.

5. The finding of the Court that J. C. W. Beckham is entitled to the office of Governor or Lieutenant Governor, or to any of the books, papers or other things pertaining to either of said offices is not sustained by sufficient evidence, and is contrary to law.

6. The finding of the Court that L. H. Carter was elected President *pro tempore* of the Senate or is entitled to exercise the functions of that office, or of Lieutenant Governor, is not sustained by sufficient evidence and is contrary to law.

The motion for a new trial herein being now submitted and the Court being sufficiently advised it is considered that the foregoing motions for a new trial be and they are hereby overrule,d to which the said W. S. Taylor and John Marshall except. Them came said William S. Taylor and John Marshall and each prayed an appeal to the Court of Appeals of Kentucky from the judgment entered in each of the above entitled causes and from the order overruling the said motions for a new trial, which appeals are granted.

On March 24, 1900 appellants caused to be executed before me the following supersedeas bond, viz:

JEFFERSON CIRCUIT COURT.
Common Pleas Division.

COMMONWEALTH OF KENTUCKY, }
Jefferson County. }

W. S. Taylor &c — Appellants
vs No. 24251
J. C. W. Beckham — Appellees
and
W. S. Taylor &c — Appellants
vs No. 24187
J. C. W. Beckham &c — Appellees

Appeal from a judgment of this Court rendered the 24th day of March 1900

WHEREAS, said Appellants have taken an appeal from the judgment of this Court rendered on the 24th day of March 1900, against W. S. Taylor & John Marshall in favor of Appellees J. C. W. Beckham and L. H. Carter which judgment is in words and figures as follows: (Here follows in the original bond a full copy of the judgment heretofore copied herein) And the Appellants desire to supersede said judgment.

Now, we W. S. Taylor and John Marshall principals & The Fidelity and Deposit Company of Maryland surety do hereby covenant to and with the Appellees J. C. W. Beckham and L. H. Carter that the Appellants will pay to the Appellees all costs and damages that shall be adjudged against the Appellant on the appeal, and also that they will satisfy and perform the said judgment in case it shall be affirmed, and any judgment or order which the Court of Appeals of Kentucky may render, or order to be rendered by the inferior Court, not exceeding in amount or value the judgment aforesaid, and also pay all rents, hire or damage which, during the pendency of the appeal, may accrue on any part of the property of which the Appellee is kept out of possession by reason of the appeal.

WITNESS our hands this 24th day of March 1900

W. S. Taylor by Helm Bruce Atty [SEAL]
John Marshall by Helm Bruce Atty [SEAL]
Fidelity & Deposit Company of Maryland [SEAL]
By J. S. Bell Atty in fact [SEAL]

ATTEST:
Jno H. Page Clerk.
By Wm D Reed D. C.

Whereupon the folllowing supersedeas was issued and lodged in the papers of the case, viz:

STATE OF KENTUCKY, } Jefferson Circuit Court.
Jefferson County. }

W. S. Taylor &c — Apellants
vs No. 24251
J. C. W. Beckham &c — Apellee
&
W. S. Taylor &c — Appellants
vs No. 24187
J. C. W. Beckham &c — Appellees

I, John H. Page, Clerk of the Jefferson Circuit Court, Common Pleas Division in the County and State aforesaid, do hereby certify that an appeal has been granted from this Court from a judgment obtained by J. C. W. Beckham and L. H. Carter against W. S. Taylor and John Marshall for the offices of Governor and Lieutenant Governor of Kentucky and the books papers and other things pertaining to the same in the Jefferson Circuit Court, Common Pleas Division, on the 24 day of March 1900 and that a supersedeas bond has been executed after the appeal was granted. Therefore the Appellee and all others are commanded to stay proceedings, on the Judgment aforesaid.

Witness, John H. Page, Clerk of said Court, this 24 day of March 1900

JNO H. PAGE Clerk.
By WM D. REED D. C.

On March 24, 1900 the following order was entered, viz:

JEFFERSON CIRCUIT COURT
Common Pleas Division.

J. C. W. Beckham, — Plaintiff
— vs. —
W. S. Taylor, &c. — Defendants

W. S. Taylor, &c. — Plaintiffs
— vs. —
J. C. W. Beckham, &c. — Defendants.

This day came defendants in the first action mentioned above, and the plaintiffs in the second action mentioned above and filed in said actions their bill of exceptions; and the same having been examined was approved by the Court and signed by the Honorable Emmett Field, Judge thereof, which bill is as follows, viz:

JEFFERSON CIRCUIT COURT
Common Pleas Division.

J. C. W. Beckham, — Plaintiff
vs.
W. S. Taylor, &c. — Defendants.

William S. Taylor, &c. — Plaintiffs
vs. BILL OF EXCEPTIONS.
J. C. W. Beckham, &c. — Defendants.

Be it remembered that on March 24th, 1900, the above entitled actions were tried before the Court without the intervention of a jury.

On the trial of said actions the plaintiff in the first of them and the defendants in the second, read in evidence the exhibits filed with the petition in the first action, and also the affidavit of of Mrs. Beckham, which it was agreed should be read a sa a deposition; and also the depositions of Dr. McCormick, of James E. Cantrill, and of Samuel J. Shackelford.

A stipulation in writing was entered into between the parties eliminating certain portions of the exhibits filed with the petition

(being journals of the House and Senate) as being irrelevant to the issues in this cause, which stipulation was filed.

The aforesaid stipulation and the said journals, except so much thereof as was excluded by said stipulation, and the aforesaid affidavit and depositions are as follows, to-wit:

STIPULATION.

In order to diminish and simplify the record herein on appeal, it is hereby stipulated as follows, to wit:

1. The copies of the journals of the Senate and House of Representatives (hereinafter called simply "the House") of Kentucky which were filed as exhibits with the petition herein are regular in form upon their face, and are properly attested, and show that said Senate and House met in Frankfort, Kentucky on January 2nd, 1900, that being the first day of the session of the General Assembly which has lately adjourned.

2. The journals of the Senate show that on January 2nd, 1900, John Marshall as Lieutenant Governor of the State presided over the Senate as President thereof; and that on that day the following officers were elected by the Senate and immediately took the oaths of office required of them by law, to wit, William Goebel, President pro tempore; Claude Desha, Clerk; William Cromwell, Assistant Clerk; Mary C. Bennett, Enrolling Clerk; and other persons as Sergeant-at-Arms, Door-keeper, &c.

3. The journals of the House shows that on January 2nd, 1900, the following persons were elected officers of the House and immediately took the oaths of office required of them by law, to wit: South Trimble, Speaker; Ed. O. Leigh, Chief Clerk; Henry Williams, Assistant Clerk; Miss Margaret Ingalls, Enrolling Clerk; and other persons as Sergeant-at-Arms, Door-keeper, &c.

4. The journals of both the Senate and House show that on January 3rd, 1900, a message in writing, on the general condition of the State, signed "William S. Taylor, Governor of Kentucky" was received by each of said bodies from the Governor, and was read by each of said bodies.

5. The journals of both the Senate and House show that on January 3rd, 1900, there was presented to each of said bodies, by a member thereof, a written notice of contest entitled William Goebel vs. William S. Taylor, and one entitled J. C. W. Beckham vs. John Marshall, which notices were set forth in full upon the journals of the Senate and House. An exact copy of said notice in the contest of Goebel vs. Taylor is set forth in the answer and counter-claim in this case; and the said notice in the contest of Beckham vs. Marshall is an exact copy of the same except as to names of the contestant and contestee, and the office contested for.

Endorsements by the Sheriff of Franklin County on each of said notices showed it was executed January 2, 1900, by delivering a copy thereof to the contestee named in said notices.

6. Following the recording of said notices of contest the Senate Journal then shows the following proceedings on January 3, 1900, in the following words and figures, viz:

"On motion of Mr. Carter,

"Ordered, That said notice be filed and entered in full in the Journal. Mr. Carter proposed the following resolution, viz:

"Resolved, by the Senate, That the Clerk be and he is directed to provide and prepare the box and Ballots required by law for the drawing by lot of the Senate members of the boards or committees for the preparation for trial and determination of the contests for the offices of Governor and Lieutenant Governor.

"Which was adopted."

"And the Senate journal further shows the following proceedings on January 4, 1900, in the following words and figures, viz:

"The President announced that the Senate would now proceed according to law to select by lot three of its members to act in conjunction with eight members of the House of Representatives, selected in the same manner, as a board for determining the contest for Governor between William Goebel, contestant, and W. S. Taylor, contestee.

"The roll of the Senate was called and the following Senators responded to their names, viz:

Geo. H. Alexander, J. Embry Allen, John Barret, John A. Bell, Curtis F. Burnam, L. H. Carter, W. O. Coleman, William H. Cox, R. C. Crenshaw, C. H. Dye, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, J. C. Gillespie, William Goebel, S. B. Harrel, Thos. H. Hays, N. T. Howard, J. P. Huff, B. S. Huntsman, J. J. Johnston, R. M. Jolly, W. O. Jones, T. S. Kirk, J. H. McConnell, W. E. Miller, R. E. Puryear, A. D. Roberts, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch, F. M. White, John L. Whitehead.

Absent Mr. T. M. Hill.

"The names of the Senators present were written on separate pieces of paper, rolled and placed in a box by the Clerk, in the manner provided by law, who, after the same had been well shaken, drew the names of three Senators therefrom, separately, which were opened and read aloud by the President as follows, viz:

"Messrs. Newton Frazier, R. C. Crenshaw and J. Embry Allen, whom the President declared to be selected as members of said Board.

"The President announced that the Senate would now proceed according to law, to select by lot three of its members to act in conjunction with eight members of the House of Representatives, selected in the same manner, as a Board for determining the con-

test for Lieutenant Governor between J. C. W. Beckham, contestant, and John Marshall, contestee.

"The roll of the Senate was called and the following Senators responded to their names, viz:

Geo. H. Alexander, J. Embry Allen, John Barret, John A. Bell, Curtis F. Burnam, L. H. Carter, W. O. Coleman, William H. Cox, R. C. Crenshaw, C. H. Dye, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, J. C. Gillespie, William Goebel, S. B. Harrel, Thos. H. Hays, N. T. Howard, J. P. Huff, B. S. Huntsman, J. J. Johnston, R. M. Jolly, W. O. Jones, T. S. Kirk, J. H. McConnell, W. E. Miller, R. E. Puryear, A. D. Roberts, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch, F. M. White, John L. Whitehead.

Absent, Mr. T. M. Hill.

"The names of the Senators present were written on separate pieces of paper, rolled and placed in a box by the Clerk, in the manner provided by law, who, after the same had been well shaken, drew the names of three Senators therefrom, separately, which were opened and read aloud by the President, as follows, viz:

"Messrs. W. O. Coleman, S. B. Harrel and J. D. Watson, whom the President declared to be selected as members of said Board."

7. Following the recording of said notices of contest in the House journal it then shows the following proceedings on January 3, 1900, in the following words and figures, viz:

"Mr. Hickman offered the following resolution, viz:

"Resolved by the House of Representatives, That the Clerk be and is directed to provide and prepare the box and ballots required by law for the drawing by lot of the House members of the boards or committees for the preparation for trial and determination of the contests for the offices of Governor and Lieutenant Governor.

"Which was adopted.

"Mr. Haswell offered the following resolution, viz:

Resolved by the House of Representatives of Kentucky:

"That the Speaker of this House appoint a committee consisting of four members of this body to witness and inspect the ballot box, the insertion of the names of the members therein and the drawing of the various contest committees therefrom, on the day when said contest committees are drawn or selected.

"Said committee so appointed shall consist of two Democrats and two Republicans.

"Mr. Barton objected to the further consideration of said resolution for the reason that it was not in order.

"The Speaker sustained the point of order and so declared said resolution out of order.

"And then the House adjourned until 11'o'clock tomorrow morning."

The said House journal further shows that on January 4, 1900, the following proceedings were had, in the following words and figures, viz:

"The Speaker then announced that the House would now proceed according to law to select by lot eight of its members to act in conjunction with three members of the Senate selected in same manner as a board, for determining the contest for the office of Governor between William Goebel, contestant, and William S. Taylor, contestee.

"The roll of the House was called and all of the members thereof responded to their names, viz:

M. Abele, G. D. R. Aikin, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, Henry S. Berry, R. R. Benningfield, David Bell, B. J. Bethurum, S. W. Booker, C. F. Bosley, H. Brister, Eli H. Brown, W. A. Burkamp, J. C. Cantrill, J. W. Catron, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, James Cooper, W. P. Cox, A. P. Crawford, J. P. DeLong, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, W. U. Grider, William M. Hail, L. W. Hampton, J. W. Hance, W. T. Harris, J. P. Haswell, Jr., Eph. F. Hays, M. H. Heissman, Steve Henry, G. W. Hickman, John T. Hinton, G. A. Holland, J. P. Holt, R. C. Jarnagin, Isaac Johnson, Jno. R. Kelday, W. F. Klair, W. T. Lafferty, J. E. Leslie, J. M. Letterle, William Lewis, W. W. Lewis, W. H. Lilly, B. H. Lott, H. B. Lyon, J. A. Mahaffey, J. McDowell, P. M. McRoberts, B. F. Meadows, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, W. S. Randolph, L. C. Rawlings, W. C. Ray, William Ray, E. H. Read, Abram Renick, Ben. T. Robinson, J. F. Rogers, J. P. Rose, T. M. Sharp, C. L. Shawler, R. W. Slack, M. H. Sledge, R. H. Spurrier, Benjamin Stephens, W. A. Stith, G. B. Stout, J. D. Strong, J. H. Sturgell, Robert Swan, J. C. Taylor, P. H. Taylor, Claude Terrell, W. C. Tipton, George C. Traver, E. E. Trivett, Claiborne J. Walton, R. E. Watkins, L. E. Weatherford, P. M. Willingham, John M. Wilson, M. R. Yarberry, Speaker Trimble.—100.

"The names of the members present were written on separate pieces of paper, rolled and placed in a box by the clerk in the manner provided by law, who, after the same had been well shaken, drew the names of eight members of the House of Representatives therefrom separately, which were opened and read aloud by the Speaker as follows, viz: G. W. Hickman, M. R. Yarberry, Abram Renick, H. B. Lyon, G. T. Berry, G T. Finn, M. H. Sledge, E. E. Barton, whom the Speaker declared to be selected as members of said board.

"Thereupon the aforesaid members of the House together with Messrs. Newton Frazier, R. C. Crenshaw and J. Embry Allen, members of the Senate selected in like manner as members of said

board, appeared at the clerk's desk in the Hall of the House of Representatives and took the oath as required by law, which was administered by the Speaker of the House of Representatives.

"The Speaker then announced that the House would now proceed according to law to select by lot eight of its members to act in conjunction with three members of the Senate selected in the same manner, as a board for determining the contest for the office of Lieutenant Governor between J. C. W. Beckham, contestant, and John Marshall, contestee.

"The roll of the House was called and all the members responded to their names as follows, viz:

(Here follows a repetition of the names of all the members of the House).

"The names of the members present were written on separate pieces of paper, rolled and placed in a box by the clerk in the manner provided by law, who, after the same had been well shaken, drew the names of eight members of the House of Representatives therefrom separately which were opened and read aloud by the Speaker as follows, viz: A. P. Crawford, E. H. Read, David Bell, G. A. Holland, J. W. Alexander, V. H. Baird, W. H. Lilly T. M. Sharp, whom the Speaker declared to be selected as members of said board.

"Thereupon the aforesaid members of the House, together with Messrs. W. O. Coleman, S. B. Harrel and J. D. Watson, members of the Senate selected in like manner as members of said board, appeared at the clerk's desk in the Hall of the House of Representatives and took the oath required by law, which was administered by the Speaker of the House of Representatives."

8. In making the record for appeal the printed journals of the Senate and House of January 2nd, 3rd, and 4th, 1900, which were filed as exhibits with the petition, may be omitted; this stipulation being copied in lieu thereof.

9. In copying the journals of the Senate and House of January 31st, February 1st, and February 2nd, 1900, being exhibits filed with the petition after having copies the "protest, declaration and judgment" once in the Senate journal it need not be copied again; but where it occurs again it may be omitted, and in lieu thereof these words inserted, viz: "Here follows in the journal in full the 'protest, declaration and judgment' heretofore copied." The entire proceedings of January 31, Feby 1, and Feby 2, 1900, being copied in full with the exception above mentioned.

10. In copying the Senate journal of February, 20, 1900, being an exhibit filed with the petition, it shall not be necessary to copy any part thereof except that portion relating to the joint session with the House beginning in the middle of page 15 of the exhibit, and extending to the middle of page 18 thereof.

SENATE JOURNAL Jany 31, Feby 1 & 2 1900

Wednesday, January 31st, 1900.

At 10:30 o'clock A.M. the Senators proceeded to the Senate Chamber but were refused admission thereto by D. R. Collier, Adjutant General of Kentucky, accompanied by armed men. The Senators then proceeded to the Capitol Hotel in Frankfort, Kentucky.

Mr. Desha, Chief Clerk of the Senate, announced that, in the absence of Honorable John Marshall, Lieutenant Governor and President of the Senate and Honorable William Goebel, President pro temtore of the Senate, the President pro tempore had named Mr. Utley to preside during the absence of himself and of the President of the Senate.

Mr. Utley took the chair and called the Senate to order.

The reading of the journal of yesterday was dispensed with and the journal approved.

The presiding officer of the Senate presented the resignation of Honorable William Goebel, as Senator from the 24th District.

Which was accepted by him and the Senate and that fact was ordered to be entered upon the journal.

On motion of Mr. Carter the Senate then adjourned to meet on the call of Mr. Utley, presiding officer of the Senate.

Wednesday Evening, January 31st, 1900

The Senate met pursuant to call of Honorable Newton W. Utley, Presiding Officer of the Senate.

A message in writing was received from the House of Representatives by Honorable Ed. O. Leigh, Chief Clerk.

Said message wasdelivered to the chief clerk of the Senate and the same was by him entered upon the journal of the Senate and reads as follows, viz :

The Commonwealth of Kentucky.

To the members of the Senate and the House of Representatives:

By virtue of the authority vested in me under and pursuant to Joint Rule 11 of the two houses of this General Assembly, you the members of the Senate, and the House of Representatives, are hereby ordered and directed to meet in Joint Assembly in the Hall of the House of Representatives at 8 o'clock P. M. on Wednesday, January 31st, 1900, for the purpose of considering and taking action on the reports of the contests for Governor and Lieutenant-Governor.

Witness my hand as Speaker of the House of Representatives this January 31st, 1900.

South Trimble, Speaker of the House of Representatives.
Attest: edw. O. Leigh, Chief Clerk H. R.

Thereupon the Senators repaired to the Hall of the House of Representatives.

Honorable South Trimble, Speaker of the House of Representatives, in pursuance of the Joint Rule of the two Houses presided and called the Joint Assembly to order.

Mr. Hickman of the Committee on Contest of William Goebel, Contestant, against W. S. Taylor, Contestee, for the office of Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky

Before the Contest Board for the trial of the contest of William Goebel, Contestant, vs William S. Taylor, Contestee.

William Goebal, Contestant
— vs —
Wm. S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Governor of this Commonwealth between William Goebel, contestant, and William S. Taylor, Contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky, that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor at said election and we therefore respectfully suggest that this report be approved, and a resolution adopted by this joint Assembly declaring the said William Goebel Governor Elect of the Commonwealth of Kentucky for the term commencing the 12t day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes and is adjudged to be the person elected to said office of Governor for the term prescrib- by law.

G. W. Hickman, Chairman.
E. E. Barton
R. C. Crenshaw
G. T. Finn
Newton Frazier
J. Embry Allen
Abram Renick
Gus Tabor Berry
H. B. Lyon.

Frankfort, Ky., January 30th, 1900.

J. W. Beston, Clerk.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs. Carter and Farris were as follows, viz: Senators voting yea were J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, N. W. Utley, W. T. Voiers, J. D. Watson, and T. R. Welch,–yeas, 19–nays, none.

Representatives voting yea were: M. Abele, J. W. Alexander, T. H. Armstrong, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. C. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrill, George C. Travor, S. L. Van meter, R. E. Watkins, I. E. Weatherford, E. M. Willingham, Speaker Trimble.–Yeas, 56,–nays, none.

And it appearing from said vote, that a majority of the votes cast and a majority of the members of both Houses had voted in favor of the adoption of said report and resolution, the Speaker of the House of Representatives and Presiding Officer of the Joint Assembly declared that Honorable William Goebel was duly elected Governor of Kentucky at the November Election, 1899, for the term of four years.

Mr. Coleman of the Committee on Contest of J. C. W. Beckham, Contestant, against John Marshall, Contestee, for the office of Lieutenant-Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
The Commonwealth of Kentucky

Before the Contest Board for the trial of the Contest of J. C. W. Beckham, Contestant, vs. John Marshall, Contestee.

J. C. W. Beckham, Contestant
— vs —
John Marshall, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Lieutenant-Governor of this Commonwealth between

J. C. W. Beckham, contestant, and John Marshall, contestee, beg leave to report that we have heard all of the evidenced offered by both parties and we respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant-Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Lieutenant-Governor of Kentucky at said election and we therefore respectfully suggest that this report be approved and a resolution adopted by this Joint Assembly declaring the said J. C. W. Beckham, Lieutenant-Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal votes and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W. O. Coleman, Chairman.
G. Allison Holland, Secretary
S. B. Harrel
T. M. Sharp
David Bell
V. H. Baird
Jno. W. Alexander
A. P. Crawford
J. D. Watson

Frankfort, Ky., January 30th, 1900 at 8:20 o'clock P. M.

The question was then taken upon the adoption of said report and resolution, and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs Cantrill and Charlton were as follows, viz:

Senators voting yea were: J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Chenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. T. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson and T. R. Welch–yeas, 19; nays, none.

The Representatives voting yea were M. Abele, J. W. Alexander, T. H. Armstrong, V. H. Baird, E. E. Barton, G. T. Berry, Divid Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, C. A. Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, L. C. Rawlings, W. C.

Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrill, George C. Travor, S. L. Van meter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Speaker Trimble–yeas, 56; nays, none.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both Houses had voted in favor of the adoption of said report and resolution, the Speaker of the House of the Representatives and Presiding Officer of the Joint Assembly declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November Election, 1899, for the term of four years.

Mr. Cantrill presented the following protest, declaration and judgment in writing of a majority of all the members of both Houses of the General Assembly, viz:

Whereas the undersigned members of the Senate and the House of Representatives composing a majority of the General Assembly of this Commonwealth, and of the two Houses thereof on this day, January 31st, 1900, did go to the Capitol in the City of Frankfort for the purpose of holding sessions of the Senate and House pursuant to adjournment, and were then and there met by a large body of armed men, who had taken forcible possession of said building, and then and there with arms prevented the members of said General Assembly from entering and holding a session of either House in the Senate chamber, or the hall of the House of Representatives; and whereas the undersigned members of the General Assembly as aforesaid, immediately adjourned from the Capitol building to the Opera House, in the said City of Frankfort, and were in like manner forcibly prevented from holding session of either house in said Opera House by the same body of lawless, armed men, and also from holding session in the Court House in the City of Frankfort, to which the undersigned adjourned, said opera house and Court House bothi having been forcibly and unlawfully taken possession of by said armed men; and whereas the Contest Board which has been engaged since January 15th, 1900, in hearing the contest between William Goebel, contestant, and William S. Taylor, Contestee, for the office of Governor, and between J. C. W. Beckham, Contestant, and John Marshall, Contestee, for the office of Lieutenant-Governor, had decided said contest in favor of the contestants in each case, and had prepared in each case a report signed by More than seven members of each Board, finding that in one case William Goebel had received the highest number of legal votes cast at the November Election, 1899, and was then and there legally elected Governor of the Commonwealth of Kentucky and entitled to said office, and that William S. Taylor had not been elected Governor as aforesaid and was not entitled to said office, and in the other case finding that J. C. W. Beckham had received the highest

number of legal votes cast at the November election, 1899, and was then and there legally elected Lieutenant-Governor of the Commonwealth of Kentucky, and entitled to said office, and that John Marshall had not been elected Lieutenant-Governor as aforesaid, and was not entitled to the said office.

And whereas the said William S. Taylor, now acting Governor of this Commonwealth, having learned said facts and the further fact that the said Contest Board would on this day make a report of their findings in the said cases to the two Houses of the General Assembly for its action thereon, the said Taylor for the fraudulent and unlawful purpose of preventing said reports from being made to said Houses and for the umlawful purpose of preventing the General Assembly from considering or determining the said contest, or either of them, did wrongfully and corruptly in violation of his oath of office and in violation of the law of the land issue his certain proclamation falsely declaring that "A state of insurrection now prevails in the State of Kentucky, and especially in Frankfort, the Capital thereof," and unlawfully and corruptly attempted to adjourn the General Assembly to meet at London, Laurel County, Ky., on February 6th, 1900. The undersigned members of the Senate and House do now declare that no violence has been done or attempted or has existed in the City of Frankfort, save that which has resulted from and been the act of the bands of lawless armed men which said Taylor has brought to the capitol and quartered in the Capitol and executive offices, from the window of which last named building, on January 30th, 1900, an assissin fired and mortally wounded William Goebel, a Senator from the County of Kenton, and contestant for the office of Governor, while walking to the Capitol to attend a session of the Senate upon said day. By force, fraud and corruption the said contestee, Taylor, has prevented our meeting at any place in the City of Frankfort and announced through the lawless men acting under his orders, that we shall not assemble or consider the said contested election case as a Legislative body. In view of these facts we do now adjudge, determine and declare that the said William Goebel was elected Governor of this Commonwealth on the 7th day of November, 1899, and then and there received the highest number of legal votes cast at said election, and is now legally entitled to said office; that William S. Taylor did not receive the highest number of legal votes cast at said election for said office, and is not now entitled to hold the same: that J. C. W. Beckham at said election received the highest number of legal votes cast at said election for the office of Lieutenant-Governor and is now entitled to said office, and that John Marshall did not receive the highest number of votes cast as aforesaid, and is not now entitled to said office; and we do now direct that this resolution and determination be entered upon the Journal of each House.

And we do now, in the name of the people of Kentucky whose representatives we are, most solemnly protest against the unlawful act of the said William S. Taylor, acting Governor of Kentucky, in filling the Capitol of the State with reckless armed men, who has assassinated an honored member of this general assembly, and in Calling out the militia without cause, excluding the General Assembly from the Legislative Hall and in preventing it from eeting to transact the business of the Commonwealth. Claude B. Terrell, Chas. A. Nelson, R. C. Crenshaw, L. H. Carter, Geo. C. Travor, J. D. Watson, Ed. E. Barton, W. T. Lafferty, John W. Alexander, Albert H. Charlton, W. O. Coleman, Gus Talbot Berry, McD. Ferguson, Robert Swan, R. E. Watkins, L. C. Rawlings, T. J. Nickell, Eli H. Brown, Jr., V. H. Baird, I. N. Green, John M. Letterle, A. P. Crawford, Newton Frazier, J. C. B. Conrad, S. B. Harrel, P. M. Willingham, Christ Mueller, R. Owen Cochran, G. Allison Holland, William F. Klair, G. T. Farris, C. L. Shawler, S. L. Van meter, J. W. McKinney, E. L. Weatherford, S. W. Booker, J. L. Egbert, G. T. Finn, Ben Stevens, W. T. Voiers, T. M. Sharp, T. H. Armstrong, Abram Renick, Emmett Orr, Troy P. Perkins, M. Abele, A. S. Denton, W. A. Stith, T. R. Welch, W. H. Mimms, J. P. Holt, W. H. Collopy, J. C. Cantrill, J. Embry Allen, G. W. Hickmann, G. B. Stout, Newt W. Utley, E. M. Money, J. G. Furnish, J. J. Johnson, H. B. Lyon, John A. Bell, R. E. Puryear, J. H. McConnell, W. P. Cox, C. F. Bosley, David Bell, William Ray, J. M. Thomas, Steve Henry, J. W. Hance, W. O. Jones, W. C. Ray, South Trimble and M. H. Sledge.

On motion of Mr. Cantrill, ordered that said protest, declaration and judgment be adopted and entered on the journals of the Senate and House of Representatives.

The journals of the Joint Assembly were then read and approved.

On motion of Mr. Holland the Joint Assembly them dissolved.

The Senators repaired to their chambers.

Mr. Utley took the chair and called the Senate to order.

On motion of Mr. Carter the Senate then adjourned to meet on the call of Mr. Utley, the Presiding Officer of the Senate.

Thursday, February 1st, 1900.

The Senate met at 3:30 o'clock P. M. pursuant to the call of Mr. Utley, Presiding Officer of the Senate, the President being absent.

The reading of the journal of yesterday was dispensed with and the journal approved.

On motion of Mr. Carter the Senate then adjourned to meet on call of Mr. Utley, Presiding Officer of the Senate.

Friday, February 2nd, 1900.

At 2:30 o'clock P. M. the Senate met on call of Honorable Newton W. Utley, presiding officer of the Senate, the President being absent.

The reading of the journal yesterday was dispensed with and the journal approved.

Mr. Bell moved that the roll of the Senate be called.

Which motion was adopted.

The roll of the Senate was then called and the following Senators responded to their names, viz:

J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. P. Harrell, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch.—19.

Mr. Bell then presented the following resolution, viz:

Be it resolved by the Senate that the report of the Contest Board selected according to law to try the contested election wherein William Goebel is contestant and W. S. Taylor is contestee for the office of Governor of the Commonwealth of Kentucky, which report declares that at the election held on the 7th day of November, 1899, William Goebel was a candidate for the office of Governor of the Commonwealth and that he received the highest number of legal votes cast for any candidate for said office at said election and that said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky, be and the same is hereby adopted and William Goebel is hereby declared to be the Governor of the Commonwealth of Kentucky for the term of four years beginning on the 12th day of December, 1899.

Which resolution was unanimously adopted.

Mr. Utley moved to reconsider the vote by which the Senate had adopted said resolution.

Mr. Utley moved to lay said motion on the table.

Which motion was adopted.

Mr. Bell then presented the following resolution, viz:

Be it resolved by the Senate that the Board selected according to law to try the contested election wherein J. C. W. Beckham is contestant and John Marshall is contestee for the office of Lieutenant-Governor of the Commonwealth of Kentucky, which declares that at the election held on the 7th day of November, 1899, J. C. W. Beckham was a candidate for the office of Lieutenant-Governor of the Commonwealth of Kentucky, and that he received the highest number of legal votes cast for any candidate for said office at said election and that said J. C. W. Beckham was duly and legally elected Lieutenant-Governor of the Commonwealth of Kentucky, be and the same is hereby adopted and J. C. W. Beckham is hereby declared to be Lieutenant-Governor of the Commonwealth of Kentucky for the term of Four years beginning on the 12th day of December, 1899.

Which resolution was unanimously adopted.

Mr. Utley moved to reconsider the vote by which the Senate had adopted the said resol ution.

Mr. Utley moved to lay said motion on the table
Which motion was adopted :

Mr. Frazier, of the Committee on Contest of William Goebel, Contestant, against W. S. Taylor, Contestee, for the office of Governor, presented the following report and resolution in writing, viz :

GENERAL ASSEMBLY,
Commonwealth of Kentucky

Before the Contest Board for the trial of the contest of William Goebel, Contestant vs William S. Taylor, Contestee.

William Goebel, Contestant
— vs —
Wm. S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Governor of this Commonwealth between William Goebel, contestant, and William S. Taylor, Contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky, that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor at said election and we therefore respectfully suggest that this report be approved, and a resolution adopted by this joint Assembly declaring the said William Goebel Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes and is adjudged to be the person elected to said office of Governor for the term prescrib—by law.

G. W. Hickman, Chairman.
E. E. Barton.
R. C. Crenshaw
G. T. Finn
Newton Frazier
J. Embry Allen
Abram Renick
Gus Tabot Berry
H. B. Lyon.

Frankfort, Ky., January 30th, 1900.

J. W. Boston, Clerk.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

And it appearing from said vote that a majority of the votes cast and a majority of the members of the Senate had voted in favor of the adoption of said report and resolution, the Presiding Officer of the Senate declared that Honorable William Goebel was duly elected Governor of Kentucky at the November Election, 1899 for the term of Fourx years.

Mr. Farris moved to reconsider the vote by which the Senate had adopted the said Resolution.

Mr. Farris moved tolay said motion on the table

Which motion wasadopted.

Mr. Coleman of the Committee on Contest of J. C. W. Beckham, Contestant, against John Marshall, Contestee, for the office of Lieutenant-Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,

The Commonwealth of Kentucky.

Before the Contest Board for the trial of the contest of J. C. W. Beckham, Contestant, vs John Marshall Contestee,

J. C. W. Beckham, Contestant

— vs —

John Marshall Contestee

The undersigned, the Board appointed and selecting by the General Assembly to determine the contest of the election for the office of Lieutenant-Governor of this Commonwealth between J. C. W Beckham, contestant, and John Marshall, Contestee, beg leave to report that we have heard all of the evidence offered by both parties and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there Received the highest number of legal votes cast for anyone for the office of Lieutenant Governor of Kentucky at said election and we therefore respectfully suggest that this report be approved and a resolution adopted by this joint assembl y declaring the said J. C. W. Beckham Lieutenant Governor Elect of the Commonwealth of Kentucky for the term commencing the 13th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal

votes and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W. O. Coleman, Chairman
G. Allison, Holland, Secretary
S. B. Harrel
T. M. Sharp
David Bell
V. H Baird
John W. Alexander
A P. Crawford
J.D.Watson

Frankfort Kentucky, January 3aoth, at 8:20 o'clock P.M.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

It appearing from said vote that a majority of the votes cast and a majority of the members of the Senate had voted in favor of the adoption of said report and resolution, the Presiding Officer of the Senate declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Jones moved to reconsider the vote by which the Senate had adopted said resolution.

Mr. Jones moved to lay said motion on the table.

Which motion was adopted.

Mr. Ferguson moved that the protest, declaration and judgment heretofore adopted in joint assembly on January 31st, 1900, be ratified, adopted and confirmed by the Senate.

Which motion was adopted.

Said protest, declaration and judgment reads as follows, viz:

(Here follows in the journal in full the "protest, declaration and judgment" heretofore copied herein.)

Mr. Welch moved to reconsider the vote by which the Senate had adopted and ratified said protest, declaration and judgment.

Mr. Welch moved to lay such motion on the table.

Which motion was adopted.

Mr. Bell proposed a Joint Resolution entitled:

S. Res, 14. Resolution relating to the contests of William Goebel, for Governor, and J. C. W. Beckham, for Lieutenant-Governor.

By unanimous consent the rules were suspended and said resolution was taken up for consideration.

Said resolution reads as follows; viz:

Be it resolved by the General Assembly of the Commonwealth of Kentucky.

That the reports of the Contest Board selected according to law to try the contested election wherein William Goebel is contestant and W. S. Taylor is contestee for the office of Governor of

the Commonwealth of Kentucky, and J. C. W. Beckham is contestant and John Marshall is contestee for the office of Lieutenant Governor of the Commonwealth of Kentucky at the election held on the 7th day of November, 1899, William Goebel was a candidate for the office of Governor of the Commonwealth of Kentucky, and J. C. W. Beckham was a candidate for the office of Lieutenant-Governor of the Commonwealth of Kentucky, and that William Goebel received the highest number of legal votes cast for any candidate for Governor and J. C. W. Beckham received the highest number of legal votes cast for any candidate for Lieutenant-Governor at said election, and that said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky and J. C. W. Beckham was duly and legally elected Lieutenant Governor of the Commonwealth of Kentucky, be and the same are hereby adopted, and William Goebel is hereby declared to be the Governor of the Commonwealth of Kentucky, and J. C. W. Beckham is hereby declared to be the Lieutenant-Governor of said Commonwealth each to hold for the term of four years commencing on the 12th day of December, 1899.

Which resolution was unanimously adopted.

Ordered that the Clerk announce to the House of Representatives immediately the adoption of said resolution.

Mr. Puryear moved to reconsider the vote by which the Senate had adopted said resolution.

Mr. Puryear moved to lay said motion on the table. Which motion was adopted.

A message in writing was received from the House of Representatives by Honorable Ed. O. Leigh, Chief Clerk.

Said message was delivered to the Chief Clerk of the Senate, and the same was by him entered upon the journal of the Senate, and reads as follows, viz:

Commonwealth of Kentucky

To the Members of the Senate and House of Representatives.

By virtue of the authority vested in me under and pursuant to Joint Rule 11 of the Two Houses of this General Assembly, you, the members of the Senate and House of Representatives, are hereby ordered and directed to meet in Joint Session in the Hall of the House of Representatives at 3 o'clock P. M., on Friday 2, 1900, for the purpose of considering and taking action on the reports of the contests for Governor and Lieutenant-Governor, and for the purpose of electing a State Librarian for the suceeding term.

Witness my hand as Speaker of the House of Representatives, this February 2, 1900.

South Trimble,
Speaker House of Representatives

Attest: Ed O. Leigh,
Chief Clerk H. R.

Thereupon the Senators repaired to the Hall of the House of the Representatives

Honorable South Tremble, Speaker of the House of Representatives, in pursuance of the joint rule of the two Houses presided and called the Joint Assembly to order.

Mr. Hickman of the Committee on Contest of William Goebel, Contestant, against W?. S. Taylor, Contestee, for the office of Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky.

Before the Contest Board for the trial of the contest of William Goebel, Contestant, vs. William S. Taylor, Contestee:

William Goebel, Contestant.
— vs —
William S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly, for the office of Governor of this Commonwealth between William Goebel, Contestant, and William S. Taylor, Contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes, cast for any one for the office of Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved, and a resolution adopted by this joint assembly declaring the said William Goebel, Governor Elect of the Commonwealth of Kentucky, for the term commencing December 12th, 1899. We decide that the said William Goebel has received the highest number of legal votes and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

G .W. Hickman, Chairman,
E. E. Barton,
R. C. Crenshaw,
G. T. Finn,
Newton Frazier,
J. Embry Allen,
Abram Renick,
Gus Talbot Berry,
H. B. Lyon.

Frankfort, Ky., m January 30th, 1900.

J. W. Boston, Clerk.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs Carter and Brown, were as follows, viz:

Senators voting yea were: J. Embry Allen, Jno. A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch.—18.

Representatives voting yea were: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Callopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Green, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Muller, Charles Aaron Nelson, T. J. Nickell, Troy P. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrill, George D. Travor, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.—55.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both houses had voted in favor of the adoption of said report and resolution, the Speaker of the House of Representatives and Presiding Officer of the Joint Assembly declared that Honorable William Goebel was duly elected Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Johnson moved to reconsider the vote by which the Joint Assembly had adoptee said report and resolution.

Mr. Johnson moved to lay said motion on the table.

Which motion was adopted.

Mr. Coleman of the Committee on contest of J. C. W. Beckham, contestant, against John Marshall, contestee, for the office of Lieutenant-Governor presented the following the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
The Commonwealth of Kentucky.

Before the Contest Board for the trial of the contest of J. C. W. Beckham, Contestant, vs. John Marshall, Contestee,

J. C. W. Beckham, Contestant,
— vs —
John Marshall, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the

office of Lieutenant-Governor of this Commonwealth between J. C. W. Beckham, Contestant, and John Marshall, Contestee, beg leave to report that we have heard all of the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there Received the highest number of legal votes cast for anyone for the office of Lieutenant Governor of Kentucky at said election and we therefore respectfully suggest that this report be approved and a resolution adopted by this joint assembl y declaring the said J. C. W. Beckham Lieutenant Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal votes, and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W. O. Coleman, Chairman,
G. Allison, Holland, Secretary,
S. B. Harrel
T. M. Sharp
David Bell
V. H. Baird
John W. Alexander
A. P. Crawford
J. D. Watson.

Frankfort, Kentucky, January 30th, at 8:20 o'clock P. M.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

Yeas and nays being required thereon by Messrs. Cantrill and Charlton were as follows, viz:

The senators voting yea were: J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson and T. R. Welch.–18.

The representatives voting yea were: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli. H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nickell, Troy P. Perkins, L. C.

Rawlings, W. C. Ray, Wm. Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrill, George C. Travor, R. E. Watkin, L. E. Weatherford, P. M. Williamham, Mr. Speaker Trimble–55.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both houses had voted in favor of the adoption of said report and resolution the Speaker of the House of Representatives and Presiding Officer of the Joint Assembly declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November Election, 1899, for the term of four years.

Mr. Abele moved to reconsider the vote by which the Joint Assembly had adopted said report and resolution.

Mr. Abele moved to lay said motion on the table.

Which motion was adopted.

Mr. Cantrill presented the following protest, declaration and judgment in writing of a majority of all the members of both Houses of the General Assembly, viz:

(Here follows in the journal in full the "protest declaration and judgment" heretofore copied).

On motion of Mr. Cantrill ordered that said protest, declaration and judgment be re-adopted and re-entered on the journals of the Senate and House of Representatives.

Mr. Harrel moved to reconsider the vote by which the Joint Assembly had readopted said protest, declaration and judgment.

Mr. Harrel moved to lay said motion on the table.

Which motion was adopted.

The Presiding officer of the Joint Assembly then announced that they would now proceed to the execution of the joint order of the day, the election of a State Librarian and announced theat nominations were in order for the office of State Librarian.

Mr. Puryear nominated Miss Pauline Helm Hardin of Jefferson County as a suitable person to fill said office.

There being no further nomination the Presiding Officer announced that the Clerks would not proceed to take the joint vote and the vote being taken stood thus.

Senators voting for Miss Hardin were: J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch.—19.

Representatives voting for Miss Hardin were: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. D. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L.

Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrill, George C. Travor, R E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.—55.

In summing up the vote of the Jojnt Assembly it was found to stand thus:

For Miss Pauline Helm Hardin 74 votes.

Whereupon the Presiding Officer announced that Miss Pauline Helm Hardin having received a majority of all the votes cast and a majority of all members of both Houses of the General Assembly was duly elected State Librarian for the term of two years, commencing on the first Monday in June, 1900.

The journals of the Joint Assembly were then read and approved.

On motion of Mr. Carter the Joint Assembly then dissolved.

The Senators repaired to their Chambers

Presiding officer took the chair and called the Senate to order.

Mr. Utley, the Presiding officer, then left the chair.

Honorable Claude Desha, Chief Clerk of the Senate took the chair and announced that there was a vacancy in the office of President pro tempore and that he would hold an election to fill said vacancy, and that nominations were in order for President pro tempore of the Senate in lieu of Honorable William Goebel resigned.

Mr. Puryear nominated Mr. L. H. Carter as a suitable person to fill said office.

There being no further nominations the vote was then taken thereon and resulted as follows, viz:

Senators voting for Mr. Carter were J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch–19.

Whereupon the Chief Clerk announced that Mr. Carter was duly elected President pro tempore of the Senate for the term prescribed by law, and Mr. Carter thereupon took the oath prescribed by the laws and constitution of the Commonwealth and took the chair and presided.

Mr. Triplett proposed the following concurrent resolution, viz:

S. Rez 14½—Resolution providing for holding the sessions of the General Assembly inLouisville

Resolved by the Senate, the House of Representatives concurring therein that the General Assembly shall hereafter hold its sessions in the City of Louisville beginning on Monday, February 5th, 1900 at 12 o'clock M. until otherwise ordered be the two houses.

By unanimous consent the rules were suspended and said resolution was adopted.

Ordered that the Clerk announce to the House of Representatives immediately the adoption of said resolution.

The Senate then adjourned to meet in Louisville on Monday, February 5th, 1900, at 12 o'clock M.

Monday, February 5th, 1900.

Pursuant to a concurrent resolution adopted by the Senate and House of Representatives on Friday, February 2nd, 1900, the Senate met in Louisville, Ky., at 12 o'clock M. at the Fifth Avenue Hotel, Honorable L H. Carter President pro tempore of the Senate called the Senate to order.

The reading of the Journal of Friday was dispensed with and the Journal approved.

On motion of Mr. Farris the Senate adjourned until to-morrow at 12 o'clock M.

A Copy Attest
Claude Desha
Chief Clerk of the Senate.

HOUSE JOURNAL
Jan'y 31, Feb'y 1 and 2, 1900.

Wednesday, Jan. 31st, 1900.

The House was called to order by Speaker Trimble in the House of Representatives, and being prevented from the further discharge of business by the unlawful interference of an armed body of soldiers headed by one Dan Collier, claiming to be Adjutant General of Kentucky, the Speaker adjourned the Session to meet at the City Hall in Frankfort, Ky., at once.

The body then repaired to the City Hall in Frankfort, Ky. where they were again met by the said body of soldiers and again forcibly prevented from proceeding with the business of the session.

Whereupon the body proceeded to the Court House in the City of Frankfort, Ky., by the order of the Speaker, where they were again prevented from proceeding with the business of the session by the same body of armed soldiers.

Whereupon the Speaker announced that the further business of the session would be considered at a place and time to be later designated by him.

The House then took a recess, to meet again on the call of the Speaker.

A copy, attest: Edw. O. Leigh,
Clerk House of Representatives.

Wednesday Evening, January 31st, 1900.

The House met pursuant to the call of the Speaker.

The Speaker presented the following order in writing, which order was entered upon the journal of the House, and the Clerk delivered a copy thereof to the Clerk of the Senate.

The Commonwealth of Kentucky:

To the members of the Senate and House of Representatives:

By virtue of the authority vested in me under and pursuant to joint rule 11 of the two houses of this General Assembly, you the members of the Senate and House of Representatives are hereby ordered and directed to meet in joint assembly in the hall of the House of Representatives at 8 o'clock P. M. on Wednesday, January 31st, 1900, for the purpose of considering and taking action on the reports of the contests for Governor and Lieutenant-Governor.

Witness my hand as Speaker of the House of Representatives this January 31st, 1900.

South Trimble,
Speaker of the House of Representatives.

Attest: Edw. O. Leigh, Chief Clerk, H. R.

The Senators appeared and took their seats, and the Hon. South Trimble, Speaker of the House of Representatives, in pursuance of the joint rule of the two Houses, called the joint assembly to order.

Mr. Hickman of the Committee on contest of William Goebel, contestant, against Wm. S. Taylor, contestee for the office of Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky.

Before the Contest Board for the trial of the Contest of William Goebel, Contestant, vs Wm. S. Taylor, Contestee.

Willliam Goebel, Contestant
— vs —
William S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Governor of this Commonwealth between William Goebel, contestant, and William S. Taylor, contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the

Commonwealth of Kentucky that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved, and a resolution adopted by this Joint Assembly declaring the said William Goebel Governor elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

G. W. Hickman, Chairman
E. E. Barton
R. C. Crenshaw
G. T. Finn
Newton Frazier
J. Embry Allen
Abram Renick
Gus Talbot Berry
H. B. Lyon

Frankfort, Ky., Jany. 30th, 1900.

J. W. Boston, Clerk.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs Carter and Farris were as follows, viz:

The Senators voting yea were J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, Newton Utley, W. T. Voiers, J. D. Watson, T. R. Welch.–yeas 19, nays, none.

The representatives voting yea were M. Abele, J. W. Alexander, T. H. Armstrong, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, L. C. Rawlings, W. C. Ray, Wm. Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, S. L. Van meter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.–Yeas 56; nays–none.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both Houses had voted in favor of the adoption of said report and resolution the Speaker of

the House of Representatives and presiding officer of the Joint Assembly, declared that Honorable William Goebel was duly elected Governor of Kentucky at the November Election, 1899, for the term of Four years.

Mr. Coleman of the Committee on Contest of J. C. W. Beckham, contestant, against John Marshall, contestee, for the office of Lieutenant-Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky,

Before the Contest Board for the trial of the contest of J. C. W. Beckham, Contestant, vs John Marshall, Contestee.

J. C. W. Beckham, Contestant
— vs —
John Marshall, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Lieutenant Governor of this Commonwealth, between J. C. W. Beckham, Contestant, and John Marshall, Contestee, beg leave to report that we have heard all of the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant-Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for any one for the office of Lieutenant-Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved and a resolution adopted by this Joint Assembly declaring the said J. C. W. Beckham Lieutenant-Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal votes and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W. O. Coleman, Chairman.
G. Allison Holland, Secretary
S. B. Harrel
T. M. Sharp
David Bell
V. H. Baird
John W. Alexander
A. P. Crawford
J. D. Watson

Frankfort, Ky., January 30th, 1900. at 8:20 o'clock P. M.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs. Cantrill and Charlton were as follows, viz:

The Senators voting yea were, J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch–yeas, 19–nays, none.

The Representatives voting yea were, M. Abele, J. W. Alexander, T. H. Armstrong, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. E. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claud Terrell, George. C. Traver, S. L. Van meter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker, Trimblea—yeas–56; nays, none.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both Houses had voted in favor of the adoption of said report and resolution, the Speaker of the House of Representatives and presiding officer of the Joint Assembly, declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November Election, 1899, for the term of four years.

Mr. Cantrill presented the following protest, declaration and judgment in writing of a majority of all the members of both Houses of the General Assembly, viz:

(Here follows in the journal in full the "protest, declaration and judgment" heretofore copied in the Senate journal).

On motion of Mr. Cantrill

Ordered that said protest, declaration and judgment be adopted and entered on the journals of the Senate and House of Representatives.

The journals of the Joint Assembly were then read and approved and on motion of Mr. Holland the Joint Assembly then dissolved.

The Senators then retired and on motion the House then adjourned subject to the call of the Speaker.

A copy. Attest: Edw. O. Leigh, Clerk House of Representatives.

Thursday, February 1st, 1900.

The House met pursuant to a call of Speaker Trimble

The Speaker called the House to order and the journal of yesterday was approved.

On motion of Mr. Lafferty the House adjourned to meet again on the call of the Speaker.

A copy. Attest: Edw. O. Leigh, Clerk House of Representatives.

Friday, February 2nd, 1900.

The House met at 2:30 P. M., and was called to order by Speaker Trimble.

The journal of yesterday's session was read and approved.

On demand of Mr. Finn the roll was called to ascertain if a quorum of the House was present and the following members answered to their names:

M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, W. U. Grider, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, L. C. Rawlings, W. C. Ray, Wm. Ray, Abram Renick, T. M. sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terell, George C. Traver, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.–56.

On call of the counties the following bill was introduced:

By Mr. Finn:

H. B. 200—An Act to Amend Section 965, Sub,-division, 3 Article 2, Chapter 35, of the Kentucky Statutes, entitled "Circuit Court", so far as same fixes the times and places for holding Courts in the Seventh Judicial District.

Referred to the Committee on Circuit Courts.

Mr. Finn offered the following resolution:

That the Speaker appoint a Committee of three members of this House to draft a memorial and address to the people of Kentucky, setting fourth the attitude of the Democrats with reference to the lawless acts of the militia in attempting to prevent the meeting of the Legislature.

Which said resolution was adopted.

The Speaker appointed under the foregoing resolution, Messrs Finn, Laferty and Cochran as such Committee.

Mr. Sharp offered the following resolution, viz:

Be it resolved by the House of Representatives that the report of the Contest Board selected according to law to try the contested

election wherein William Goebel is contestant and W. S. Taylor is contestee for the office of Governor of the Commonwealth of Kentucky, which report declares that at the election held on the 7th day of November, 1899, William Goebel was a candidate for the office of Governor of the Commonwealth and that he received the highest number of legal votes cast for any candidate for said office at said election and that said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky, be and the same is hereby adopted and William Goebel is hereby declared to be the Governor of the Commonwealth of Kentucky for the term of four years beginning on the 12th day December, 1899.

Which said resolution was unanimously adopted.

Mr. Lyon moved that the vote by which said resolution was adopted be reconsidered.

Mr. Nickell moved that said motion lie on the table.

Which last motion was adopted.

Mr. Bosley offered the following resolution, viz:

Be it resolved by the House of Representatives that the Board selected according to law to try the contested election wherein J. C. W. Beckham is contestant and John Marshall is contestee for the office of Lieutenant-Governor of the Commonwealth of Kentucky, which declares that at the election held on the 7th day of November, 1899, J. C. W. Beckham was a candidate for the office of Lieutenant-Governor of the Commonwealth of Kentucky, and that he received the highest number of legal votes cast for any candidate for said office at said election and that said J. C. W. Beckham was duly and legally elected Lieutenant-Governor of the Commonwealth of Kentucky, be and the same is hereby adopted and J. C. W. Beckham is hereby declared to be Lieutenant-Governor of the Commonwealth of Kentucky for the term of Four years beginning on the 12th day of December, 1899.

Which said resolution was unanimously adopted.

Mr. Collopy moved that the vote by which said resolution was adopted be reconsidered.

Mr. Shawler moved that said motion lie on the table

Which last motion was adopted.

Mr. Cantrill moved that the House ratify, adopt and confirm the protest, declaration and judgment adopted at the Joint Session of the General Assembly held on January 31st, 1900

Which motion was adopted.

Said protest, declaration and judgment as adopted by the House on January 31st, 1900, reads as follows, viz:

(Here follows in the Journal in full the protest, declaration and judgment heretofore copied in the Senate Journal.)

A message was received from the Senate that they had passed the following resolution: viz.

Be it resolved by the General Assembly of the Commonwealth of Kentucky.

That the reports of the Contest Board selected according to law to try the contested election wherein William Goebel is contestant and W. S. Taylor is contestee for the office of Governor of the Commonwealth of Kentucky, and J. C. W. Beckham is contestant and John Marshall is contestee for the office of Lieutenant-Governor of the Commonwealth of Kentucky at the election held on the 7th day of November, 1899, William Goebel was a candidate for the office of Governor of the Commonwealth of Kentucky, and J. C. W. Beckham was a candidate for the office of Lieutenant-Governor of the Commonwealth of Kentucky, and that William Goebel received the highest number of legal votes cast for any candidate for Governor and J. C. W. Beckham received the highest number of legal votes cast for any candidate for Lieutenant-Governor at said election, and that said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky and J. C. W. Beckham was duly and legally elected Lieutenant-Governor of the Commonwealth of Kentucky, be and the same are hereby adopted, and William Goebel is hereby declared to be the Governor of the Commonwealth of Kentucky, and J. C. W. Beckham is hereby declared to be the Lieutenant-Governor of said Commonwealth each to hold for the term of four years commencing on the 12th day of December, 1899.

By unanimous consent the question was then taken on concurring in said resolution, and it was unanimously decided in the affirmative.

Mr. Baird moved that the vote by which said resolution was adopted be reconsidered.

Mr. Holt moved that said motion lie on the table which last motion was adopted.

Mr. Hickman of the Committee on Contest of William Goebel, Contestant, against W. S. Taylor, Contestee, for the office of Governor, presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky.

Before the Contest Board for the trial of the Contest of William Goebel, Contestant, vs. Wm. S. Taylor, Contestee.

William Goebel, Contestant
—vs—
William S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Governor of this Commonwealth between William Goebel, contestant, and William S. Taylor, contestee, beg leave to

report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor of Kentucky at said election, and we therefore, respectfully suggest that this report be approved, and a resolution adopted by this Joint Assembly declaring the said William Goebel Governor elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

G. W. Hickman, Chairman.
E. E. Barton
R. C. Crenshaw
G. T. Pinn
Newton Frazier
J. Embry Allen
Abram Renick
Gus Talbot Berry
H. B. Lyon

Frankfort, Ky., Jany. 30th, 1900.

J. W. Boston, Clerk.

The question was then taken upon the adoption of said report, and it was decided unanimously in the affirmative.

And it appearing from said vote that a majority of the votes cast and a majority of the members of the House of Representatives had voted in favor of said report and resolution, the Speaker of the House declared that Honorable William Goebel was duly elected Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Finn moved that the vote by which the House adopted said report and resolution be reconsidered.

Mr. Holland moved that said motion lie on the table. Which last motion was adopted.

Mr. Holland from the Committee on Contest of J. C. W. Beckham, Contestant, against John Marshall, Contestee, for the office of Lieutenant-Governor presented the following report and resolution in writing, viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky,

Before the Contest Board for the trial of the contest of J. C. W. Beckham, Contestant, vs John Marshall, Contestee.

J. C. W. Beckham, Contestant
— vs —
John Marshall, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the office of Lieutenant Governor of this Commonwealth, between J. C. W. Beckham, Contestant, and John Marshall, Contestee, beg leave to report that we have heard all of the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant-Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for any one for the office of Lieutenant-Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved and a resolution adopted by this Joint Assembly declaring the said J. C. W. Beckham Lieutenant-Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal votes and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W. O. Coleman, Chairman.
G. Allison Holland, Secretary
S. B. Harrel
T. M. Sharp
David Bell
V. H. Baird
John W. Alexander
A. P. Crawford
J. D. Watson

Frankfort, Ky., January 30th, 1900. at 8:20 o'clock P. M.

The question was then taken upon the adoption of said report andresolution and it was unanimously decided in the affirmative.

And it appearing from said vote that a majority of the votes cast and a majority of the members of the House of Representatives had voted in favor of said report and resolution the Speaker of the House declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Lafferty moved that the vote by which said report and resolution was adopted be reconsidered.

Mr. Terrell moved that said motion lie on the table.

Which last motion was adopted.

The Speaker presented the following order in writing which was entered upon the journal of the House and the Clerk delivered a copy thereof to the Clerk of the Senate, viz:

COMMONWEALTH OF KENTUCKY

To the Members of the Senate and House of Representatives.

By virtue of the authority vested in me under and pursuant to Joint Rule 11 of the Two Houses of this General Assembly, you, the members of the Senate and House of Representatives, are hereby ordered and directed to meet in Joint Session in the Hall of the House of Representatives at 3 o'clock P. M., on Friday 2, 1900, for the purpose of considering and taking action on the reports of the contests for Governor and Lieutenant-Governor, and for the purpose of electing a State Librarian for the suceeding term.

Witness my hand as Speaker of the House of Representatives, this February 2, 1900.

South Trimble,
Speaker House of Representatives.

Attest: Edw. O. Leigh,
Chief Clerk H. R.

The Senators appeared and took their seats and the Honorable South Trimble, Speaker of the House of Representatives in pursuance of the joint rule of the two Houses, called the Joint Assembly to order.

Mr. Hickman, of the Committee on Contests of William Goebel Contestant, against W. S. Taylor, Contestee, for the office of Governor, presented the following report and resolution in writing viz:

GENERAL ASSEMBLY,
Commonwealth of Kentucky.

Before the Contest Board for the trial of the contest of William Goebel, Contestant, vs William S. Taylor, Contestee:

William Goebel, Contestant
— vs —
William S. Taylor, Contestee.

The undersigned, the Board appointed and selected by the General Assembly, for the office of Governor of this Commonwealth between William Goebel, Contestant, and William S. Taylor, Contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes, cast for anyone for the office of Governor of Kentucky at said election, and we therefore respectfully suggest that this report be approved, and a resolution adopted by this joint assembly declaring the said William Goebel, Governor Elect of the Commonwealth of Kentucky, for the term commencing December 12th, 1899. We decide that the said William Goebel has received the highest number of legal vote and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

G. W. Hickman, Chairman
E. E. Barton
R. C. Crenshaw
G. T. Finn
Newton Frazier
J. Embry Allen
Abram Renick
Gus Talbot Berry
H. B. Lyon

Frankfort, Ky. m January 30th, 1900.

J. W. Boston, Clerk.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required by Messrs. Carter and Brwon, were as follows, viz:

The Senators voting yea were:

J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welcch,–18.

The Representatives voting yea were:

M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nickell, Troy T. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.–55.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both houses had voted in favor of the adoption of said report and resolution, the Speaker of the House of Representatives and presiding officer of the Joint Assembly declared that Honorable William Goebel was elected Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Johnson moved that the vote by which said report and resolution was adopted be reconsidered, and that said motion lie on the table, which last motion was adopted.

Mr. Coleman of the Committee on contest of J. C. W. Beckham, Contestant, against John Marshall, Contestee, for the office of Lieutenant-Governor presented the following report andresolution in writing, viz:

GENERAL ASSEMBLY,

The Commonwealth of Kentucky.

Before the Contest Board for the trial of the Contest of J. C. W. Beckham, Contestant, vs. John Marshall, Contestee,

J. C. W. Beckham, Contestant

— vs —

John Marshall, Contestee.

The undersigned, the Board appointed and selected by the General Assembly to determine the contest of the election for the

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office of Lieutenant-Governor of this Commonwealth between J. C. W. Beckham, contestant, and John Marshall, contestee, beg leave to report that we have heard all of the evidenced offered by both parties, and we respectfully report to the General Assembly of the Commonwealth of Kentucky that in our opinion J. C. W. Beckham was legally elected Lieutenant-Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Lieutenant-Governor of Kentucky at said election and we therefore respectfully suggest that this report be approved and a resolution adopted by this Joint Assembly declaring the said J. C. W. Beckham, Lieutenant-Governor Elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said J. C. W. Beckham has received the highest number of legal votes, and is adjudged to be the person elected to said office of Lieutenant Governor for the term prescribed by law.

W? O. Coleman, Chairman.
G. Allison Holland, Secretary
S. B. Harrel,
T. M. Sharp
David Bell
V. H. Baird
Jno. W. Alexander
A. P. Crawford
J. D. Watson

Frankfort, Ky., January 30th, 1900, at 8:20 o'clock P. M.

The question was then taken upon the adoption of said report and resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs Cantrell and Charlton, were as follows, viz:

The Senators voting yea were:

J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnson, W. O. Jones; R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welcch,—18.

The Representatives voting yea were:

M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, D. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Callopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J.W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Charles Aaron Nelson, T. J. Nick-

ell, Troy T. Perkins, L. C. Rawlings, W. C. Ray, William Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.–55.

And it appearing from said vote that a majority of the votes cast and a majority of the members of both Houses had voted in favor of the adoption of said report and resolution the Speaker of the House of Representatives and Presiding Officer of the Joint Assembly declared that Honorable J. C. W. Beckham was duly elected Lieutenant-Governor of Kentucky at the November election, 1899, for the term of four years.

Mr. Abele moved to reconsider the vote by which the joint Assembly had adopted said report and resolution and also moved that said motion lie on the table which last motion was adopted.

Mr. Cantrill presented the following protest, declaration and judgment in writing of a majority of all members of both houses of the General Assembly, viz:

(Here follows in the journal in full the "protest, declaration and judgment" heretofore copied in the Senate journal).

On motion of Mr. Cantrill:

Ordered that said protest, declaration and judgment, heretofore adopted at the Session of the Joint Assembly on January 31st, 1900, he readopted and re-entered on the journals of the Senate and House of Representatives.

Mr. Harrell moved to reconsider the vote by which the joint assembly had readopted said protest, declaration and judgment, and also moved that said motion lie on the table.

Which last motion was adopted.

The presiding officer of the Joint Assembly then announced that they would now proceed to the execution of the joint order of the day, the election of a State Librarian, and announced that nominations were in order for the office of State Librarian.

Mr. Puryear nominated Miss Pauline Helm Hardin, of Jefferson County, as a suitable person to fill said office.

There being no further nominations, the presiding officer announced that the clerks would now proceed to take the joint vote, and the vote being taken stood thus:

The senators voting for Miss Hardin were J. M. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnson, W. O. Jones, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch–19

The representatives voting for Miss Hardin were: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B.

Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, L. C. Rawlings, W. C. Ray, Wm. Ray, Abram Renick, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stevens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble,–55.

In summing up the vote of the Joint Assembly it was found to stand thus:

For Miss Pauline Helm Hardin 74

Whereupon the presiding officer announced that Miss Pauline Helm Hardin having received a majority of all the votes cast and a majority of all the members of both houses of the General Assembly was duly elected State Librarian for the term of Two years commencing on the first Monday in June, 1900.

The Journals of the Joint Assembly were then read and approved.

On motionof Mr. Carter the joint assembly then dissolved.

A message was received from the Senate that they had passed the following resolution, viz:

S. Res 14½—Resolution providing for holding the sessions of the General Assembly inLouisville.

Resolved by the Senate, the House of Representatives concurring therein, That the General Assembly shall hereafter hold its session in the City of Louisville, beginning on Monday February 5th, 1900, at 12 o'clock M. until otherwise ordered by the other two Houses.

By unanimous consent said resolution was taken up for immediate consideration and unanimously concurred in.

On motion the house then adjourned to meet in Louisvi ll on Monday, February 5th, 1900, at 12 o'clock M.

I hereby certify that the foregoing is a full and true copy of the Journal of the Kentucky House of Representatives for January 31, 1900, February 1, 1900 and February 2, 1900.

Edw. O. Leigh,
Clerk House of Representatives.

SENATE JOURNAL.

Feb 20, 1900.
Tuesday, February, 20, 1900.

The Senate met, Hon. L. H. Carter, President Pro Temporo, presiding.

The Journal of yesterday was read and approved.

A message in writing was received from the House of Representatives by the Chief Clerk thereof which was by him delivered to the Chief Clerk of the Senate, who entered the same upon the Journal of the Senate. Said message and order reads as follows, viz.:

"I South Trimble, Speaker of the House of Representatives, hereby order and call a joint meeting of the House and Senate to meet at 3:00 o'clock P. M., February 20, 1900, in the Hall of the House of Representatives for the purpose of considering and taking such action as such joint Assembly may think advisable in reference to the contests for Governor and Lieutenant Governor, and its former action in reference thereto.

South Trimble,
Speaker of House.

Attest: Edw. O. Leigh,
Chief Clerk."

On motion of Mr. Farris the Senate took a recess until 2.55 o'clock, P. M.

AFTERNOON SESSION.

At 2:55 o'clock P. M. the Senate met, Hon. L. H. Carter, President Pro Tempore, presiding.

The Senators repaired to the Hall of the House of Representatives.

Hon. South Trimble, Speaker of the House of Representatives, in pursuance of the joint rule of the two houses, presided and called the joint assembly to order.

The roll of the members of the joint assembly was then called and the following members responded to their names, viz.:

Senators.—J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J. Johnston, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J D. Watson, T. R. Welch.–20.

Representatives.—M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, W. U. Grider, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, C. A. Nelson, T. J. Nickell, Emmett Orr, T. P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stephens, W. A. Stith, G.

B. Stout, Robert Swan, Claude Terrell, George C. Traver, S. L. Van Meter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.–57.

Total.–77.

Mr. Farris proposed the following resolution, viz.:

Whereas, on the 31st, day of January, 1900, the acting Governor of the Commonwealth of Kentucky by use of armed force, dispersed the General Assembly, and has until recently prevented these bodies from assembling in their regular rooms and places of meeting; and

Whereas, the General Assembly and each house thereof, after public notice met in joint and separate sessions in the city of Frankfort, a full quorum of such bodies being present and adopted the majority reports and resolutions of the Boards of Contests for Governor and Lieutenant Governor of the Commonwealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant Governor, and seating the Contestants, William Goebel, and J. C. W. Beckham, as Governor and Lieutenant Governor, respectively, all of which proceedings, reports and resolutions are set out in the Journals of the two houses of the General Assembly; and

Whereas, these bodies are now enabled to meet in their regular places of meeting, and while they adhere to the belief beyond doubt that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, to remove any dobut that may exist in the minds of any of the people of the Commonwealth, now,–

Be it resolved by both houses of the General Assembly in joint meeting, to the end that all doubt may be removed if any exists as to the validity and regularity of the actions and proceedings at the times and places shown by the Journals of the two houses other than their regular rooms provided by law, that all the acts, proceedings, and resolutions of said bodies, and if the Joint Assembly of the two houses upon, or touching the report of the majority of the Boards of Contest for the offices of Governor and Lieutenant Governor, unseating the Contestees and seating William Goebel and J. C. W. Beckham, and declaring them to have been elected Governor and Lieutenant Governor, respectively, on the 7th day of November, 1899, is hereby re-adopted, re-enacted, re-affirmed, and ratified at this regular place of meeting provided by law at the seat of government in Frankfort, Ky.

The question was then taken upon the adoption of said resolution and it was decided in the affirmative.

The yeas and nays being required thereon by Messrs. Farris and Hickman were as follows, viz.:

Those voting in the affirmative.—J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrel, J. J.

Johnston, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch, M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Klair, W. T. Lafferty, J. M. Letterle, H. B. Lyons, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, C. A. Nelson, T. J. Nickell, T. P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benjamin Stephens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, S. L. Van Meter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker (South Trimble).—75.

Those voting in the negative.—R. S. Triplett, W. U. Grider.—2.

And it appearing from said vote, that a majority of the votes cast, and a majority of the members of both houses had voted in favor of said resolution the Speaker of the House of Representatives, and presiding officer of the Joint Assembly, declared that said resolution was adopted.

The journals of the joint assembly were read and approved.

On motion of Mr. Utley the Joint Assembly then dissolved.

The Senators repaired to their chamber.

HOUSE JOURNAL.

Feb'y 20, 1900

Tuesday, Feb. 20, 1900.

The House met at eleven o'clock a. m. pursuant to adjournment.

Mr. Speaker Trimble in the chair.

Prayer by Rev. L. E. Wallace of the M. E. Church, South.

On demand of Mr. Hickman the roll was clalled and the following members answered to their names:

M. Abele, G. D. R. Aikin, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G, T, Berry, R. R. Benningfield, David Bell, B. J. Bethurum, S. W. Booker, C. F. Bosley, H. Brister, Eli H. Brown, W. A. Burkamp, J. W. Catron, A. H. Charlton, R. O. Cochran, J. C. B. Conrad, James Cooper, W. P. Cox, A. P. Crawford, J. P. DeLong, A. S. Benton, J. L. Egbert, G. T. Finn, I, N. Greene, W. U. Grider, William M. Hail, L. W. Hampton, J. W. Hance, W. T. Harris, J. P Haswell, Jr., Eph F. Hays, M. H. Heissman, Steve Henry, G. W. Hickman, J. P. Holt, R. C. Jarnagin, Isaac

Johnson, J. R. Kelday, W. T. Lafferty, J. E. Leslie, J. M. Letterle, William Lewis, W. W. Lewis, W. H. Lilly, B. H. Lott, H. B. Lyon, J. A. Mahaffey, J. McDowell, P. M. McRoberts, J. W. McKinney, B. F. Meadows, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. G. Nickell, Troy P. Perkins, W. S. Randolph, W. C. Ray, William Ray, E. H. Read, Abram Renick, Ben T. Robinson, J. F. Rogers, J. P. Rose, T. M. Sharp, C. L. Shawler, R. W. Slack, M. H. Sledge, R. H. Spurrier, Benj. Stephens, W. A. Stith, G. B. Stout, J. D. Strong, J. H. Sturgell, Robt. Swan, P. H. Taylor, Claude Terrell, W. C. Tipton, Geo. C. Traver, E. E. Trivett, S. L. Vanmeter, Claiborne J. Walton, R. E. Watkins, L. E. Weatherford, P. M. Willingham, John M. Wilson, M. R. Yarberry, Mr. Speaker Trimble.

The Speaker of the House of Representatives presented the following order for a joint session of the Senate and House of Representatives, which order was entered upon the journal of the House and a copy thereof delivered by the clerk thereof to the Clerk of the Senate, viz:

I, South Trimble, Speaker of the House of Representatives, hereby order and call a joint meeting of the House and Senate to meet at 3 o'clock p. m., February 20, 1900, in the Hall of the House of Representatives for the purpose of considering and taking such action as such joint assembly may think advisable in reference to the contest for Governor and Lieutenant-Governor and the forme actions in reference thereto.

South Trimble,
Speaker of the House.

Attest:

Ed O. Leigh,
Chief Clerk.

Mr. Stith offered the following resolution, viz:

Whereas, On the 31st day of January, 1900, the then acting Governor of the Commonwealth of Kentucky, by use of an armed force, dispersed the General Assembly and has until recently prevented this body from assembling at its regular room and place of meeting; and,

Whereas, The General Assembly and each House thereof after public notice met in joint and separate sessions, in the city of Frankfort, Ky., a full quorum of said bodies being present, and adopted the majority report and resolutions of the Boards of Contest for Governor and Lieutenant-Governor of the Commonwealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant-Governor, and seating the contestants, William Goebel and J. C. W. Beckham, as Governor and Lieutenant-Governor respectively, all of which proceedings, report and resolutions are set out in the journals of the two Houses of the General Assembly; and,

Whereas, This body is now enabled to meet in it regular place of meeting and, whilst it adheres to the belief beyond doubt that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, but to remove any doubt that may exist in the minds of any of the people of the Commonwealth; now be it,

Resolved, By the House of Representatives of the Commonwealth of Kentucky to the end that all doubt may be removed, if any exists, as to the validity and regularity of the action and proceedings had at the time and place shown by the journals of the two Houses other than the regular room provided by law, that all the acts, proceedings and resolutions of this body and of the joint assembly of the two Houses upon or touching the report of the majority of the Boards of Contest for the offices of Governor and Lieutenant-Governor, unseating the contestees, W. S. Taylor and John Marshall, and seating William Goebel and J. C. W. Beckham, and declaring them to have been elected Governor and Lieutenant-Governor respectively, on the 7th day of November, 1899, is hereby reenacted, readopted, reaffirmed and ratified, at this regular place of meeting provided by law at the seat of government in Frankfort, Ky.

Mr. Holland moved that said resolution be adopted.

And the question being taken thereon it was decided in the affirmative.

The yeas and nays being required thereon by Messrs. Catron and Taylor were as follows, viz:

YEAS: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benj. Stephens, W. A. Stith, G. B. Stout, Robt. Swan, Claude Terrell, Geo. C. Traver, S. L. Vanmeter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.

NAYS: G. D. R. Aikin, R. R. Benningfield, B. J. Bethurum, H. Brister, W. A. Burkamp, J. W. Catron, James Cooper, J. P. DeLong, William M. Hail, L. W. Hamilton, W. T. Harris, J. P. Haswell, Jr., Eph F. Hays, M. H. Heissman, R. C. Jarnagin, Isaac Johnson, J. R. Kelday, J. E. Leslie, William Lewis, W. W. Lewis, W. H. Lilly, B. H. Lott, J. A. Mahaffey, J. McDowell, P. M. McRoberts, B. F. Meadows,

W. S. Randolph, E. H. Read, Ben T. Robinson, J. F. Rogers, R. W. Slack, R. H. Spurrier, J. D. Strong, J. H. Sturgell, P. H. Taylor, W. C. Tipton, E. E. Trivett, Claiborne J. Walton, John M. Wilson, M. R. Yarberry.

Mr. Finn moved that the vote by which said resolution was adopted be reconsidered.

Mr. Finn moved that said motion lie on the table.

Which last motion was agreed to.

Yeas and nays being required thereon by Messrs. Slack and Bethurum were as follows; viz:

Yeas: M. Abele, J. W. Alexander, T. H. Armstorng, C. C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, A. H. Charlton, R. O. Cochran, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn. I. N. Greene, W. U. Grider, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benj. Stephens, W. A. Stith, G. B. Stout, Robert Swan, Claud Terrell, Geo. C. Traver, S. L. Vanmeter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.

Nays: G. D. R. Aikin, R. R. Benningfield, B. J. Bethurum, H. Brister, W. A. Burkamp, J. W. Catron, James Cooper, J. P. DeLong, William M. Hail, L. W. Hampton, W. T. Harris, J. P. Haswell, Jr., Eph F. Hays, M. H. Heissman, R. C. Jarnagin, Isaac Johnson, J. R Kelday, J. E. Leslie, William Lewis, W. W. Lewis, W. H. Lilly, B. H. Lott, J. A. Mahaffey, J. McDowell, P. M. McRoberts, B. F. Meadows, W. S. Randolph, E. H. Read, Ben T. Robinson, J. F. Rogers, R. W. Slack, R. H. Spurrier, J. D. Strong, J. H. Sturgell, P. H. Taylor, W. C. Tipton, E. E. Trivett, Claiborne J. Walton, John M. Wilson, M. R. Yarberry.

AFTERNOON SESSION.

The House met at 2:55 o'clock.

Mr. Speaker Trimble in the chair.

The roll was called and the following members answered to their names:

M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton. R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, W. U. Grider, J. W. Hance, Steve

Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Clair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benj. Stephens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, S. L. Vanmeter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.

The Senators appeared and took their seats and the joint assembly went into the consideration of the joint order of the day pursuant to the call of the Speaker of the House of Representatives.

The Speaker of the House of Representatives presided at the joint session and Senator L. H. Carter, President of the Senate, sat at the left of the Speaker. The two houses were convened in joint assembly, the same being composed of a majority of the members elected to each House.

The roll was then called and the following members of the joint assembly answered to their names as follows, viz:

Senators:–J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Fergusaon, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, R. S. Triplett, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch.

Representatives: M. Abele, J. W. Alexander, T. H. Armstrong, C. C. Bagby, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, W. U. Grider, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Clair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Emmett Orr, Troy P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benj. Stephens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell, George C. Traver, S. L. Vanmeter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.

Mr. Farris presented the following resolution:

Whereas, On the 31st day of January, 1900, the acting Governor of the Commonwealth of Kentucky by use of armed force dispersed the General Assembly and has until recently prevented these bodies from assembling in their regular rooms and places of meeting; and,

Whereas, The General Assembly and each House thereof, after public notice, met in joint and separate sessions in the city of Frankfort, a full quorum of such bodies being present, and adopted the majority reports and resolutions of the Boards of Contest for Governor and Lieutenant-Governor of the Commonwealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant-Governor, and seating the contestants, William Goebel and J. C. W. Beckham, as Governor and Lieuten-

ant-Governor respectively, all of which proceedings, reports and resolutions are set out in the journals of the two houses of the General Assembly; and,

Whereas, These bodies are now enabled to meet in their regular places of meeting and, while they adhere to the belief beyond doubt that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, to remove any doubt that may exist in the minds of any of the people of the Commonwealth, now be it

Resolved, By both Houses of the General Assembly in joint meeting, to the end that all doubt may be removed, if any exists, as to the validity and regularity of the actions and proceedings at the times and places shown by the journals of the two Houses other than their regular rooms provided by law, that all the acts, proceedings and resolutions of said bodies and of the joint assembly of the two Houses upon or touching the report of the majority of the Boards of Contest for the offices of Governor and Lieutenant-Governor, unseating the contestees, and seating William Goebel and J. C. W. Beckham and declaring them to have been elected Governor and Lieutenant-Governor respectively, on the 7th day of November, 1899, is hereby readopted, reenacted, reaffirmed and ratified at this, the regular place of meeeting provided by law at the seat of Government in Frankfort, Ky.

The question being taken on the adoption of said resolution it was decided in the affirmative.

The yeas and nays being required thereon by Messrs. Farris and Hickman were as follows, viz:

Senators.

Yeas: J. Embry Allen, John A. Bell, L. H. Carter, W. O. Coleman, R. C. Crenshaw, G. T. Farris, McD. Ferguson, Newton Frazier, J. G. Furnish, S. B. Harrell, J. J. Johnson, W. O. Jones, J. H. McConnell, R. E. Puryear, J. M. Thomas, Newton W. Utley, W. T. Voiers, J. D. Watson, T. R. Welch.

Nays: R. S. Triplett.

Representatives:

Yeas: M. Abele, J. W. Alexander, T. H. Armstrong, C C. Bagby, V. H. Baird, E. E. Barton, G. T. Berry, David Bell, S. W. Booker, C. F. Bosley, Eli H. Brown, J. C. Cantrill, A. H. Charlton, R. O. Cochran, W. H. Collopy, J. C. B. Conrad, W. P. Cox, A. P. Crawford, A. S. Denton, J. L. Egbert, G. T. Finn, I. N. Greene, J. W. Hance, Steve Henry, G. W. Hickman, G. A. Holland, J. P. Holt, W. F. Clair, W. T. Lafferty, J. M. Letterle, H. B. Lyon, J. W. McKinney, W. H. Mimms, E. M. Money, C. Mueller, Chas. Aaron Nelson, T. J. Nickell, Troy P. Perkins, W. C. Ray, William Ray, Abram Renick, J. P. Rose, T. M. Sharp, C. L. Shawler, M. H. Sledge, Benj. Stephens, W. A. Stith, G. B. Stout, Robert Swan, Claude Terrell,

Geo. C. Traver, S. L. Vanmeter, R. E. Watkins, L. E. Weatherford, P. M. Willingham, Mr. Speaker Trimble.

Nays: W. U. Grider.

Mr. Utley moved that the joint assembly do now dissolve.

Which motion was agreed to.

The Senators then retired.

Mr. Mueller moved that when the House adjourn it be to meet to-morrow morning at 11 o'clock.

Which motion was agreed to.

And the House adjourned.

I hereby certify that the above and foregoing is a true and correct copy of the Journal of the House of Representatives, and of the Joint session of Tuesday, February 20, 1900, so far as the same relates to the ratification of the previous actions of the House and of the Joint Session relative to the election of William Goebel and J. C. W. Beckham

Attest Edw. O. Leigh
Chief Clerk H R

JEFFERSON CIRCUIT COURT

Common Pleas Division

J. C. W. Beckham and others — Plaintiffs
vs 24251
William S. Raylor &c. — Defendants
&
William S. Taylor &c. — Plaintiffs
vs 24187
J. C. E. Beckham &c. — Defendants

Affidavit of Julia Wickliffe Beckham to be read by agreement of parties as her deposition in behalf of J. C. W. Beckham and others upon the hearing of the above styled cases consolidated.

The affiant, Julia Wickliffe Beckham, on oath says that; she is the mother of John Crepps Wickliffe Beckham; that his father's name was Wm. N. Beckham She says that said John Crepps Wickliffe Beckham was born in the County of Nelson, which is in the State of Kentucky, at the old homestead known as "Wickland", which lies near Bardstown, Kentucky; and that he was born on the 5th day of August, A. D. 1869.

Julia Wickliffe Beckham

Subscribed and sworn to before me this 19th day of March, A. D. 1900 My commission expires Jan. 8 1902.

M. E. McLoughlin
Notary Public, Jefferson County, Ky.

Deposition of Dr McCormack

JEFFERSON CIRCUIT COURT

Common Pleas Division

J. C. W. Beckham &c., Plaintiffs.
vs No. 24251.
Wm. S. Taylor &c., Defendants.

AND

Wm. S. Taylor &c., Plaintiffs.
vs No. 24187.
J. C. W. Beckham &c., Defendants.

The deposition of Dr. J. M. McCormack, taken pursuant to agreement, before me, on the 20th day of March, 1900, at the office of Mr. Zach Phelps, in the Kenyon Building, in Louisville, Ky., to be read in evidence in behalf of J. C. W. Backham &c., at the trial of said above styled cases.

Dr. J. M. McCormack, being duly sworn and examined by Mr. Phelps, deposed as follows:—

1—Doctor, will you give us your full name, and your age, if you please?

A—J. M. McCormack; I am 52 years old.

2—Where is your home?

A—At Bowling Green.

3—Do you hold any official position in the State of Kentucky?

A—Yes, sir; I am Secretary of the State Board of Helath.

4—For how long have you been thus connected?

A—Nearly twenty years, sir.

5—Did you know Wm. Goebel in his lifetime?

A—Yes, sir.

6—How long had you known him up to the time of his death, personally?

A—I had known him ever since he became a member of the Senate, sir; some twelve or thirteen years.

7—How long have you been a physician; a practicing physician?

A—Thirty years.

8—Were you in the City of Frankfort on the 30th day of January, 1900?

A—Yes, sir.

9—Were you called professionally to see Wm. Goebel?

A—Yes, sir; I went to see him as soon as I knew he was shot.

10—About what time of day were you called to see him, as near as you can state it?

A—It was a little after eleven o'clock—about eleven twenty or twenty-five; I don't recollect the exact time.

11—At what place did you see him, and what was the occasion of the visit?

A—He had been shot in front of the State Building. I was in the Senate Chamber at the time, and went immediately down, and overtook them just as they reached Dr. Hume's office; examined him there with Dr. Hume for a moment, and gave directions as to what was to be done for him at the time, and went on—preceded them to the room, arranged for the reception of the patient at his room, and had made the arrangement for the treatment.

12—What room do you refer to?

A—His room at the Capital Hotel.

13—In Frankfort, Ky.?

A—Yes, sir.

14—I will ask you, after he was taken to his room at the Capital Hotel, who attended him professionally after he was carried there?

A—Drs. E. E. Hume, J. G. Furnish, T. R. Welsh and myself were almost in constant attendance upon him; but in addition he was seen by Dr. David Barrow of Lexington, and Dr. A. M. Vance of this city, Dr. Dandridge, Dr. Walker and Dr. McKenzie of Cincinnati. Dr. Cartlege, of this city, also saw him at one time. These gentlemen only saw him on the first afternoon and evening after his injury—the last named gentlemen.

15—Do you know whether or not, at any time after he was taken to the room as you have described, any oath was administered to him by anybody, and if so, you may state when it was, and who administered the oath, and what oath, if you know, was administered to him?

A—An oath was administered to him upon two occasions.

16—Give us the first?

A—The first was in the evening of January 31st; that oath was administered by Chief Justice Hazelrigg, and it was the oath prescribed by the Constitution, with which I am fairly familiar; he read the oath to him.

17—Who administered to the oath to him?

A—Chief Justice Hazelrigg.

18—To what office was he sworn, if you heard the oath administered?

A—He was sworn to discharge the duties of Governor of the State of Kentucky.

19—Were there any witnesses present to the administering of that oath?

A—Yes, sir.

20—Will you give us some of their names, or as many as you can recollect?

A—Dr. Welsh and I think Dr. Furnish were both present; one of the nurses, Mr. Arthur Goebel, and my recollection is that Mr. John Hendrick.

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21—And yourself?

A—And myself; there were some other gentlemen standing in the little ante-room both times when the oath was administered, where it was curtained off, but I don't remember specifically who they were.

22—You said a moment ago in answer to my question that an oath was administered on two occasions; will you give us the other occasion, and state who administered the oath, and what oath was then administered?

A—The same oath was administered to him on the Friday afternoon following, that would be on the 2nd day of February. That oath was administered by Judge Cantrill.

23—What Judge Cantrill is that?

A—Judge Cantrill of the Franklin Circuit Court, formerly Lieutenant Governor of the State. I have known him for many years; I don't remember his initials.

24—And what oath did he administer?

A—He administered the same oath; he was sworn in to discharge the duties of the office of Governor, and the oath administered was read to him from the Statutes or the Constitution; the Judge had the volume, and administered the oath to him.

25—At what place were these respective oaths administered?

A—In his room at the Capital Hotel in the City of Frankfort.

26—What was the physical state and the mental state of Wm. Goebel at the time these respective oaths were administered?

A—He was a wounded man; had a gun shot wound in the chest when both of the oaths were administered to him. His mental condition was as perfect on both occasions as I have ever known him to be; he retained his faculties to a remarkable degree during the entire time. A short time after the receipt of the injury, he was unconscious for a short time after the shot; rallied from that, and with the exception of a temporary delerium on Thursday following the injury, which would be the 1st day of February, caused by defective secretion from his kidneys, he retained his faculties perfectly, untilshortly after one o'clock of the day he died, Saturday.

27—Addressing your attention especially to the particular period of time, during which the oath was administered and received, what was the condition of his mental faculties at those particular times?

A—His mind was in as perfect condition as I ever knew it to be during all of my acquaintance with him. On Friday his physical condition was very much better; he was better that day than at any time after he was shot; we had more hopes of his recovery, and he was in every way in much better condition; he was bright mentally, and hopeful himself, and was in a much better physical condition than he was on Wednesday when the first oath was administered to him. I don't know that his mental condition was

better, because it was perfect on both occasions, and perfect during the entire time, except for the temporary delerium of Thursday, of which I spoke.

28—In giving the dates which you have given—Doctor—January 31st, and February 2nd, in what year were those dates?

A—Of the present year; during the recent session of the General Assembly.

29—When did Wm. Goebel die, if he died at all?

A—He died at 6.45 on Saturday; which would be February 3rd.

30—6.45 A. M. or P. M.?

A—P. M.

31—Do you know J. C. W. Beckham?

A—Yes, sir.

32—Do you know, of your knowledge, any thing of any oath having been administered to J. C. W. Beckham?

A—Yes, sir; I know of an oath administered to him shortly after the death of Mr. Goebel; about an hour after his death.

33—At what place?

A—At the Capital Hotel in Frankfort.

34—Who administered that oath, and if you know, what oath was administered to him?

A—The same oath was read to him, and it was administered to him by Mr. Sam Shackleford, the Clerk of the Court of Appeals.

35—Do you know any person or persons that were present at the administering and the reception of that oath?

A—Yes, sir; Senator J. C. S. Blackburn, and I think Mr. Phil Thompson was present; my son, Dr. A. T. McCormack, was present; and there were quite a number—a good many more present than when the oath was administered to Mr. Goebel, as his was a sick room; there were a good many gentlemen in Mr. Blackburn's room when the oath was administered to Mr. Beckham. My recollection is that the oath—I know I wrote the certificate of death before the oath was administered, and my recollection is that the oath was written and signed by Mr. Beckham; I would not like to be positive about that—I know I signed the certificate of death, and my recollection is that he subscribed—I know he subscribed something, and I think it was the oath administered to him.

36—What was the date of that occurance?

A—That was Saturday, February 3rd.

37—1900?

A—1900; sometime between 7 and 8 o'clock.

38—P. M.?

A—Yes, sir.

Cross examined by Mr. Bruce.

39—You have spoken of a Doctor Welsh and a Dr. Furnish who were present; who were those gentlemen, how did they come to be present?

A—They were both members of the State Senate; Dr. Furnish is the Senator from Boone County, Representative from that District; Dr. Welsh was Senator from Jessamine County, Representing that District; and they came to the room either with the body, or very shortly afterwards, and assisted in the nursing and treatment of his case.

40—Where were you when you first heard of the wounding of Mr. Goebel?

A—I was in the Senate Chamber.

41—Where was he when you first saw him after he was wounded?

A—They were carrying him along the pavement in front of the Executive Building, pretty well up towards the corner. I crossed the street, and overtook them just as they reached Dr. Hume's office.

42—Was he examined in Dr. Hume's office; was the body examined?

A—Very superificially; the clothing was drawn up, but it was cold in there, and a crowd in there, and I suggested to Dr. Furnish that he be taken at once to his room before he was undressed, and that he get a cot and bring him up; and I went on and made arrangements, prepared the bed and had the hot water bottle, and artificial blood—normal salt solution.

43—Were you present when they began to examine him in Dr. Hume's office?

A—Yes, sir.

44—Were you there during the whole examination?

A—No; as I say, when I was there they drew up the clothing and examined the wound; he was bleeding from the wound freely.

45—You were there then?

A—I was there then, but I left at once, and went on to the room to prepare for him, as it was understood he was to be brought right on up to the room; how much examination was made after I left I don't know, of course.

46—They didn't take his clothes off of him then in Dr. Hume's office?

A—They may have removed his coat, I would not like to be positive about that; I am rather inclined to think they did. I know the clothing was just drawn up, and then the balance of his clothing was removed after he was brought up to his room.

47—Nothing else removed in the office but his coat?

A—That is my recollection; I would not be positive about that. It was done under a hurry; I was in a hurry to get on to

the room to prepare for him, and the understanding was that no especial treatment, except an opiate to ease the pain, was to be given him then, and I didn't charge my memory with the extent of the removal of the clothing in the office.

48—Did they take his shirt off of him in the office?

A—I think not, is my recollection.

49—Who were present in the office with him, in Dr. Hume's office?

A—Oh, I could not tell you. Dr. Hume was there, and two or three other physicians came in, but the office was full of people—they crowded in as they do under an excitement of that kind; that was one reason for not examining him there.

50—He was taken then, I suppose, immediately from Dr. Hume's office to his room?

A—Yes, sir; I went on up, and they brought him up in a few minutes.

51—What was the character of the wound, Doctor?

A—It was a gun-shot wound of the chest; the bullet penetrated the vest, in the upper back edge of the pocket, just in the front part of the arm pit, and ranged a little downward, and came out on the opposite side an inch and a half or two inches to the left of the backbone.

52—Which of his organs did it penetrate in its passage?

A—It passed, apparently, from our examination, through the sixth rib, it was right over the rib, and then passed through the lung, I should judge the lower lobe of the right lung, and passed out back of the spinal cord, apparently, and then came out, as I say, about an inch and a half to two inches lower down on the opposite side of the body.

53—Was it such a wound as to produce, and did it produce fever?

A—No, sir; he had no fever. You see, the wound was dressed aseptically, as we say, it was cleaned as thoroughly as could be done to prevent septic fever, and he had—and his temperature was rather below natural from the effects of the shot for the first twenty-four or thirty hours; he had practically no fever until the morning of the day of his death.

54—On Wednesday how was his respiration and his pulse?

A—His pulse was—I haven't the record with me, but his pulese during the first thirty-six hours was about 140—faster than that at first, it was very rapid at the beginning; he was almost pulseless during the first three or four hours; after that his pulse ranged from about 150 down to 140, and his respiration was about forty—it was rapid, and rather labored during the first twenty-four hours. Do you want me to go on now and state—will it save time to state the condition of the circulation and respiration?

55—Yes, sir.

A—That continued pretty well on through Wednesday, he hadn't fully recovered from the shock and the depression from the

wound and from the loss of blood, which had not been excessive. On Thursday the pulse was rather improved, and his respiration was not so rapid, it came down to about 36; then on Friday—Thursday night and Friday, his condition improved very materially; his pulse came down once to 116, the tone of it was very much improved, and his respiration to 28, and in every way his condition was very much better; continued so all day long on Friday and up until about four o'clock on Saturday morning, when he took a change for the worse, and had some fever, and vomiting, and hiccough, of which he had had a little during Thursday night and Friday—became a prominent symptom, and his case assumed a more grave aspect in every respect, and he gradually grew worse then from 4 o'clock on Saturday morning until his death; conscious up until about one o'clock, and after that in the first part of the afternoon in a semi-stupor, recognizing persons and answering questions when aroused, but only partially conscious, and gradually sank into a stupor until his death.

56—Were you present at the autopsy held on the body?

A—I was not.

57—Do you know who were present?

A—I have no information on the subject. My own information, I knowwho was present, but I was not present.

58—When was tha autopsy held?

A—I cannot state that, Mr. Bruce. I have heard.

59—When did you hear; what is your information?

A—I am not certain that I am accurate about that. You see, I was sick; I was at Mr. Goebel's bedside constantly—

60—When do you think it was?

A—I don't know. I know an autopsy was made, I heard the physicians say so, but I am not certain that they told me—my impression is that it was held within the first twenty-four hours after his death, some time on Sunday afternoon is my impression, but that is not sufficiently positive to say that it was done; that is my impression. I was not present.

61—Who, according to your information, was present at the autopsy?

A—Well now, I have no knowledge on that subject at all, Mr. Bruce. I have heard.

62—What is your information?

A—Well, I have heard that Dr. Welsh and Dr. Hume were present and probably some other physician, but I am not sure what other besides those two; I think there were several though.

63—Do you know where it was held?

A—No, sir; I do not.

64—Have you any information as to where it was held?

A—I never asked a question on that subject at all, sir.

65—Have you any information as to where it was held?

A—No, sir; as I say I never asked a question as to where it was held; I have no information on the subject at all. I supposed

those physicians were to testifyin the case in the future, and I respected their position as I would want them to respect mine; I supposed they would testify in the case in the future.

66—Were you in the City of Frankfort when it was done?

A—No, sir; I was not. As I say, I had been at Mr. Goebel's bedside almost constantly from the time he was injured, and I was sick—worn out with the loss of rest and the care of his case; and shortly after Gov. Beckham was—I made the certificate, and Gov. Beckham was sworn in, I went to bed, and went home the following morning, and was in bed for nearly two weeks afterwards.

67—At what time did Mr. Goebel die?

A—He died at 6:45 on Saturday afternoon, February 3rd.

68—Were you present with him at his death?

A—Yes, sir; I had just left the room just as he was breathing his last.

69—You were not in the room then at the actual moment of death?

A—Well yes, he was just drawing his last breath. Mr. Arthur Goebel requested me when he died—that when I saw he was dead, or was breathing his last, he would like to be left alone in the room with only himself and his sister; so I withdrew and took the nurses and the other physicians out, requested them to leave, and we all left the room and only those two persons weere with the body, and they remained with him alone until the brother arrived; he said they wanted to remain with the body, as a family matter, until the brother, Mr. Justus Goebel, arrived; they were expecting him in a few minutes, but his train was a little late, and he didn't get there until some time after seven o'clock; so the room was not opened until after Mr. Goebel arrived, out of respect to the brother and sister.

70—What time did you leave the room?

A—Well, it was just about 6.45; he was drawing his last breath as I was leaving the room—had been dying for sometime.

71—What time of the day was the first oath administered?

A—It was late in the evening; I remember we had lights in the room—it must have been somewhere between six and seven, nearly seven, I suppose.

72—Seven o'clock in the evening of Wednesday, the 31st of January?

A—Yes, sir.

73—I wish you would state again, Doctor, who were present when that oath was administered?

A—Well, there was Judge Hazelrigg, Mr. Arthur Goebel, Dr. Welsh or Dr. Furnish, or probably both of them, I would not be very positive about that, and one of the nurses was present; Mrs. Dr. Welsh was present when the oath was administered both times, is my recollection, the wife of Senator Welsh, and there is a room curtained off there, and there were several gentlemen standing at the entrance to that ante-room, and some ladies.

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74—You say it was administered between six and seven o'clock?

A—The first time—yes, sir.

75—How long, had Judge Hazelrigg been in his room when the oath was administered to him?

A—He came in, administered the oath, and was only there for a few minutes, and left a short time afterwards. I asked him how he was feeling, and asked him two or three personal questions in regard to himself.

76—You mean, asked Judge Hazelrigg?

A—No, asked Mr. Goebel.

77—How had Judge Hazelrigg been communicated with; how was he gotten to the room?

A—I don't know, sir—sent for, I suppose.

78—Any voncersation between Judge Hazelrigg and Mr. Goebel?

A—Yes, there were several questions passed between them. I remember Judge Hazelrigg asked him how he was feeling, and Mr. Goebel responded, told him he was doing pretty well; and after the oath was administered there were some questions interchanged, chiefly in regard to his condition, as I remember.

79—Do you remember Mr. Goebel asking the question of Judge Hazelrigg, "Am I Governor now"?

A—No, sir; I do not.

80—Any question of that character?

A—I don't recollect any; if there was it didn't impress itself on my mind; of course, I was attending more especially to the medical aspects of his case, and looking after them. He was a very seriously wounded man, and I was giving more attention to his condition than I was to what was passing between these gentlemen.

81—You were a good deal interested though in the civil aspect, were you not—political aspect?

A—Well, I was interested—Mr. Goebel was a friend of mine, and I am a Democrat, if you mean that.

82—Do you remember any question being asked by Mr. Goebel of the character I indicated, of either Judge Hazelrigg or Judge Cantrill—"Am I Governor now"?

A—No, sir; I do not.

83—Was that question asked by anybody in the room that you know of, on either of those occasions, of either of those Judges?

A—Not that I recollect of, sir.

84—Anything of that character at all?

A—Nothing that I remember of.

85—Was there no discussion at that time at all, nothing said by any person present, in your hearing, as to the legal aspect of the case?

A—I never heard of it, sir; I never heard that question raised.

86—You spoke of certain persons being present just outside of the door at the time that that oath was administered, as I recollect you—the first oath?

A—Yes, sir.

87—Who were those persons?

A—I would not like to be very positive about that, because the whole transaction lasted only a short time, and I was giving my immediate attention more to Mr. Goebel.

88—Do you remember any of them?

A—I think Mrs. Senator McChord, Mrs. Charlie McChord was one of them, and there were several others standing there, but I don't remember who they were.

89—Don't remember any of the men who were there?

A—No, sir; there were some men standing there, but I don't know who they were; I didn't charge my mind with it.

90—Now, you have spoken of delerium on Thursday?

A—Yes, sir.

91—What was the extent of that delerium as to duration?

A—His mind wandered a little, only that was not positive delerium; his kidneys had failed to act from the shock and the loss of blood, and the delerium was what we physicians consider uraemic, due to defective elimination from the kidneys. In the afternoon, as soon as the kidney secretion was established, his mind cleared up, and his condition improved very much in every other respect.

92—When did that delerium begin, and when did it cease?

A—Well, it was gradual on the morning of Thursday, and passed off in the latter part of the afternoon on Thursday.

93—Coming down to the second administration of the oath—what time of day was that?

A—It was earlier in the afternoon, sometime before five o'clock; I think between four and five o'clock.

94—In the afternoon of Friday, the 2nd of February?

A—Yes, sir; is my recollection.

95—Who was present at that time?

A—Judge Cantrill, who administered the oath, Mr. Arthur Goebel, Mrs. Dr. Welsh, my son, Dr. A. T. McCormack, I remember was present, and one of the trained nurses, I think probably both of them; there were two trained nurses, and I think they were both present, and probably one or two others in the room; and then there were some gentlemen standing on the outside at this curtained door, as I say, some gentlemen and ladies—several of them.

96—Did you hear the suggestion made to anyone "Go and get Judge Cantrill," on that occasion?

A—No, sir; I did not.

97—Do you know who went for him?

A—I do not.

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98—Do you know how his presence was procured?

A—I have no information whatever on the subject. I was confined to the sick room entirely, and I was not kept informed about those matters.

99—Were any other physicians present, Doctor, at the time of Mr. Goebel's death, besides yourself?

A—Yes, sir; Dr. Furnish and Dr. Welsh and my son were in the room—came out of the room with me when I left the room.

100—That is the time immediately prior to his deatj, when he was dying?

A—Yes, sir; he was breathing his last when we came out of the room.

Re-direct examination by Mr. Phelps.

101—Do you know where Judge Cantrill boarded while in Frankfort?

A—I do not.

102—Do you know whether therewas a term of his court going on at this time, the Franklin Circuit Court?

A—Yes, sir; because I saw in the papers Court was in session. I know there was some cases going on before Judge Cantrill.

103—Do you know where his home is, where he resides?

A—Georgetown, is my impression.

State of Kentucky }
Jefferson County } ss

I, Alonzo Walker, a Notary Public, in and for said County and State, certify that the foregoing deposition of Dr. J. M. McCormack was taken pursuant to agreement, before me, at the time and place, and in the actions mentioned in the caption; that said witness was first duly sworn by me that the evidence he should give in said action should be the truth, the whole truth, and nothing but the truth; that said deposition was first taken in shorthand by me, and a full and accurate transcript of same then made by me; that the reading of the deposition to the witness and his signature to same were waived by counsel; that Mr. Zach Phelps and Mr. Louis McQuown appeared for J. C. W. Beckham &c., and Mr. Helm Bruce and Mr. J. S. Sims, W. H. Yost appeared for Wm. S. Taylor &c.,

WITNESS MY HAND this 20th day of March, 1900.

My Commission expires Feby. 24th, 1902.

ALONZO WALKER
Notary Public,
Jefferson County,
Kentucky.

[SEAL.]
Fee for taking
depositions $8.80.

Deposition of Jas. E. Cantril

JEFFERSON CIRCUIT COURT.

Common Pleas Division.

J. C. W. Beckham, Plaintiff,
vs. No. 24,251.
Wm. S. Taylor, Defendant.

Wm. S. Taylor, &c., Plaintiffs,
vs. No. 24,187.
J. C. W. Beckham, &c., Defendants.

The deposition of Judge James E. Cantrill, taken by consent of parties at the Capital Hotel, in the City of Frankfort, March 20th, 1900, to be read as evidence on the trial of the above styled causes, in the behalf J. C. W. Beckham, and others, now pending in the said Court.

Witness being of lawful age and first duly sworn, deposes and says:

Questions by Attorney for J. C. W. Beckham, &c.

Q—State your name and place of residence.

A—Jas. E. Cantrill. Georgetown, Ky.

Q—What official position, if any, do you now hold?

A—I am judge of the Fourteenth Judicial District of Kentucky.

Q—How long have you held that office?

A—Seven years past.

Q—Did you know William Goebel, the Senator, in the Senate of Kentucky.

A—I did.

Q—How long had you known him.

A—Probably ten or fifteen years; maybe longer.

Q—Had you been intimately acquainted with him, or otherwise?

A—Not especially intimate; I had known him more as a practicing attorney than I had socially.

Q—Were you in the City of Frankfort during the time when he was wounded?

A—I was; I came to Frankfort on the night after he was wounded, and remained here until the Saturday evening that he died. I left the City of Frankfort at 3:40, and I understand that he died between that and dark some time.

Q—After he was wounded, did you administer any oath to him at any time, Judge?

A—I did; I administered to him the oath of office as Governor of Kentucky.

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Q—What day, and about what hour of the day was it that you administered that oath to him?

A—My recollection is that it was on the 2nd day of February, about half past three o'clock. I have in my possession a copy of the certificate which I gave him after I had administered the oath to him.

Q—You speak about the oath that you administered to him. What oath was that, Judge?

A—It was the oath of office as Governor of Kentucky, and prescribed by the Constitution and the Statutes.

Q—Have you the certificate, or a copy of the certificate which you delivered to him at the time the oath was administered to him. If so, please file it as part of your deposition.

A—I have a copy of the certificate which I delivered to him. File and make it a part of my deposition.

Q—Where was Mr. Goebel at the time his oath was administered to him?

A—He was in his room in the Capital Hotel, City of Frankfort, on the second floor. I do not know the number of the room, but it is the room in front of the head of the stairway.

Q—Who was present, Judge, if you remember, in the room, at the time you administered the oath to Senator Goebel?

A—I remember Gov. J. B. McCreary, his brother (which of the brothers I do not recollect; I don't know them apart), his attending physician, and I don't recollect his name, but I think he lives in the City of Louisville; and a lady who I took to be his nurse; and there were possibly one or two others; I don't recollect.

Q—What occurred when you went in the room before the administration of the oath? if anything?

A—Gov. McCreary and myself were admitted to the room after a consultation between his brother and his attending physician, and Gov. McCreary went to his bedside, and said to him that the Legislature had approved and confirmed the report of the Contest Committee, and that, upon his suggestion, and those of other friends, I had been requested to come to his room and administer him the oath of office as Governor of the State of Kentucky. He said that he had been advised as to the action of the Legislature, and that he believed that it was the right thing to do, and that he was ready to take the oath of office. He was lying in bed, and the nurse was a little particular about keeping the cover over him, but, upon that statement being made, that he was ready to take the oath of office, he withdrew his right hand from under the covers, and held it up, and said that he was ready to have me administer the oath. I proceeded to do so, administering to him the oath prescribed by the Constitution and by the General Statutes of Kentucky. After that was done, I did not propose to converse with him, believing that it was not judicious

to do so. After nearly every one had left the room, I picked up my hat and walking cane, approached his bedside, and indicated to him that I wanted to tell him goodbye. He at once withdrew his right hand from under the cover, extended it, and grasped my own and shook it, and nodded to me and I nodded to him, and left the room.

Q—At the time, Judge, that you administered this oath to him and had this interview, and Gov. McCreary had the conversation, what was his mental condition?

A—It was as good as I ever knew it to be. I was to a great extent surprised to see that he had the mental and physical strength that he displayed on that occasion.

Q—Was that the first time that you had seen him since he had been wounded?

A—It was.

Q—Did you, upon that day, either before or after administering the oath to Governor Goebel, administer an oath to J. C. W. Beckham?

A—I did.

Q—What time was that done?

A—Not exceeding ten or fifteen minutes,—ten minutes, I would say,—after I left Gov. Goebel's room.

Q—In what room was that oath administered?

A—It was in my room in the Capital Hotel; No. 9, I think, is the number of the room, on this first floor of the hotel.

Q—What oath or oaths did you administer to Mr. Beckham at that time?

A—I administered to him the oath of office as Lieutenant-Governor, as prescribed by the Constitution of the State and the General Statutes.

Q—At the time you administered these oaths to him, did you give him a certificate to show him the fact.

A—I did.

Q—Have you now a copy of that certificate which you furnished Gov. Beckham?

A—I have.

Q—I will ask you to file it as part of your deposition.

A—I will file it, and make it a part of my deposition.

Q—That oath, as I understand you, was administered upon the same day and about ten minutes after the oath was administered to Gov. Goebel.

A—That is true.

Cross Examination by Mr. Helm Bruce, for W. S. Taylor, &c.

Q—Judge, how long were you in Mr. Goebel's room?

A—About ten minutes.

Q—You had no conversation with him yourself, at all, as I understand?

A—No sir.

Q—Do you recall whether he asked you, or attempted to ask you any question as to whether or not he was Governor?

A—I do not.

Q—You spoke of a physician,—as I understand you, I think, a Louisville,—as being in his room. Can you recollect the name of that physician?

A—I do not remember it now.

Q—Was it Dr. Cartledge?

A—Possibly; I would not be certain.

Q—Or Vance?

A—I do not think it was Vance.

Q—You spoke of being surprised at the amount of mental and physical strength that he displayed. How was his physical strength exhibited?

A—It was exhibited in the manner in which he controlled the movements of his body, and especially in the grasp that he gave me in his hand in bidding me goodbye.

Q—When you administered to him the oath of office as Governor, had you had exhibited to you any evidence or evidences of his title to the office of Governor?

A—I had not, further than what I had seen published, and what I had been informed as to the action of the Legislature.

Q—You had not seen any of the records as to the action of the Legislature?

A—You mean the Journals of the two Houses?

Q—Yes sir.

A—I had not.

Q—Did you know at that time whether or not he had resigned his position as Senator?

A—Only from hearsay.

Q—You had never seen a written resignation?

A—I had not.

Q—Have you ever seen any written resignation of Mr. Goebel as Senator?

A—I have not.

Q—Was Dr. McCormick present when you administered the oath?

A—I could not say who the physician was. I do not recall his name. I did know at the time, but it has escaped my memory.

Q—Of course your only means of judging as to his mental capacity was by his response to Gov. McCreary.

A—Not only that, but from his general appearance.

Q—Was there any other conversation between him and any one else in the room, while you were present?

A—I do not remember any other, except possibly his brother or the Doctor;—I am not sure which,—indicated to him, or stated in express words to him, not to talk any more than was possible.

Commonwealth of Kentucky.

I, James E. Cantrill, Judge of the 14th Judicial District of the Commonwealth of Kentucky, do certify that I did, on Friday the 2d day of February, A. D. 1900, at 3:30 o'clock P. M., in the county of Franklin, State of Kentucky, administer unto William Goebel both the oath required by the Constitution of Kentucky and by Section 3756 of the Kentucky Statutes, to be administered to the said William Goebel and to be taken by him, inducting him into office as Governor of the State of Kentucky, and do further certify that said oaths were taken by said William Goebel before me at said time and place.

Given under my hand this 2d day of February, A. D. 1900.

JAMES E. CANTRILL,
Judge 14th Judicial District.

Commonwealth of Kentucky.

I, James E. Cantrill, Judge of the 14th Judicial District of the Commonwealth of Kentucky, do certify that I did, on Friday the 2d day of February, A. D. 1900, at 3:40 o'clock P. M., in the county of Franklin, State of Kentucky, administer unto J. C. W. Beckham both the oath required by the Constitution of Kentucky and by Section 3756 of the Kentucky Statutes, to be administered to the said J. C. W. Beckham and to be taken by him, inducting him into office as Lieutenant-Governor of the State of Kentucky, and do further certify that said oaths were taken by said J. C. W. Beckham before me at said time and place.

Given under my hand this 2d day of February, A. D. 1900.

JAMES E. CANTRILL,
Judge 14th Judicial District.

Franklin County,
State of Kentucky. } Sct.

I, J. S. French, an examiner for the County and State aforesaid, certify that the foregoing deposition of Jas. E. Cantrill was taken before me at the time and place and in the behalf recited in the caption hereto; that the witness was first duly sworn before testifying, and that the deposition was written by me in his presence and read to him, and that by agreement of parties hereto, the signature of the said witness to this deposition is waived.

The plaintiff, J. C. W. Beckham, was present in person, and by his attorneys, W. S. Pryor and Lewis McQuon.

The defendant was present by his attorney, Helm Bruce.

Witness my hand this March 21st, 1900.

J. S. FRENCH,
Examiner Franklin Co., Ky.

JEFFERSON CIRCUIT COURT.
Common Pleas Division.

J. C. W. Beckham, Plaintiff,
vs. No. 24,251.
William S. Taylor, &c., Defendants.
AND
William S. Taylor, &c., Plaintiffs,
vs. No. 24,187.
J. C. W. Beckham, &c., Defendants.

The deposition of Sam J. Shackelford, taken by consent of parties at the Capital Hotel, in Frankfort, Ky., March 20th, 1900, to be read as evidence in behalf of J. C. W. Beckham, &c., on the trial of the above styled action.

Questions by Attorney for J. C. W. Beckham, &c.

1—State your age, residence and whether you hold any official position and if so state what it is and how long you have held such position?

A—Thirty-nine years; Owensboro; Clerk of Court of Appeals for a year and a half.

2—Do you know J. C. W. Beckham? If so, did you ever administer an oath to him of any kind and if you say you did tell what it was and when it was administered?

A—Yes, I know said Beckham. I administered to him the oath of office as Governor of Kentucky on the night of Feb'y. 3, 1900.

3—At the time that you administered this oath was William Goebel living or dead?

A—Dead.

4—What kind of oath did you administer to Beckham, that is where did you get the form or the contents of the oath from?

A—I got the form of oath from the Constitution of Kentucky.

Cross Examination.

1—When did Mr. Goebel die, and where were you at that time?

A—He died on night of Feby 5 1900. I was in the Capital Hotel at the time.

2—You have boarded at the Capital Hotel for many months past have you not?

A—About one year and a half.

3—You were a warm and active friend and supporter of Mr. Goebel in his race for Gouernor were you not

A—I was

4—Did you ever see any written resignation of his office as Senator, signed by Mr. Goebel? If so, when and where did you see it, and where is it now?

A—I never saw it.

5—Do you know whether or not such written resignation exists? If so, where is it?

A—I do not. I know nothing of it.

S J Shackelford

Subscribed and sworn to before me by S. J. Shackelford this March 20th, 1900.

S. D. Hines D. C.
for Ky. Court Appeals

This paper may be filed and read as a deposition in the above entitled causes

Helm Bruce
for Taylor &c

The foregoing was all of the evidence read or offered on the final trial of said action, and all which was read as aforesaid, was read in both actions.

I, Emmett Field, being the Judge before whom the aforesaid action was tried, do hereby certify that the foregoing is a true bill of exceptions and contains all the evidence.

Emmet Field

State of Kentucky }
County of Jefferson }

I, John H. Page, Clerk of the Jefferson Circuit Court, for the State and county aforesaid, do hereby certify that the foregoing printed pages, in connection with a separate printed volume entitled "Counter Notice" and marked "Filed in Court" Feby 27, 1900, attested by my name as clerk, and twelve separate volumes of type-written matter severally marked "Transcript Vol. 1" &c to and including "Transcript Vol. 12", and each marked "Filed in Court" Feby 27, 1900, and attested by my name, as clerk, (and the originals of which separate volumes are exhibits with the answer of defendants and are by consent of the parties to be taken to the Court of Appeals without being copied), do contain and constitute a true and complete transcript of the record in the case of J. C. W. Beckham vs. W. S. Taylor, &c., except so much as is omitted pursuant to stipulations filed in the cause and copied herein, as appears of record in my said office.

Given under my hand as said clerk this day of March, 1900.

Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky as aforesaid, on the 29th day of March, 1900, the following order was entered herein:—

WILLIAM S. TAYLOR
AND JOHN MARSHALL, ... *Appellants.*
vs.
J. C. W. BECKHAM, ... *Appellee.*

Came the parties by counsel and filed an agreement and on motion and by consent this case is docketed, advanced and set for hearing on April 2, 1900.

The agreement referred to in the foregoing order is as follows:—

COURT OF APPEALS OF KENTUCKY.
24187 & 24251.

William S. Taylor &c., ... *Appellants.*
vs. TWO CASES HEARD TOGETHER.
J. C. W. Beckham &c., ... *Appellees.*

MOTION.

Come the Appellants by Counsel and the Appellees by Counsel, and both and severally move the Court to advance these cases upon the docket and set them for hearing on April 2, 1900. The parties respectfully report to the Court that the matters involved in this appeal are of public and of general interest and that it is important to the State that they should be decided at once.

Bradley,
Fairleigh,
Bruce,
Attorneys for Appellants.
W. S. Pryor,
Lewis McQuown,
Zack Phelps,
Attorneys for Appellees.

Afterwards on the 2nd day of April, 1900, the following order was entered herein:—

Taylor,
vs.
Beckham.

Taylor &c.,
vs.
Beckham, &c.

These cases are by consent ordered to be heard together. The appellees tendered and moved the Court to file a copy of the proceedings of the Senate of February 19, 1900, to which appellants objected,

and these causes coming on to be heard were argued by W. S. Pryor and Lewis McQuown for appellees and W. O. Bradley and Helm Bruce for appellants and submitted.

By consent the copy of Senate proceedings referred to in above order are not copied herein.

Clerk C. A.

Afterwards on the 6th day of April, A. D. 1900, at a Court of Appeals held as aforesaid, the following orders and judgments were entered herein :—

William S. Taylor, &c.,	Appellants,
vs.	
J. C. W. Beckham,	Appellee.
William S. Taylor, &c.,	Appellants.
vs.	
J. C. W. Beckham, &c.,	Appellees.

Appeals from the Common Pleas Division of Jefferson Circuit Court.

The Court being sufficiently advised, it seems to them there is no error in the judgments herein.

It is therefore considered that the judgments herein be affirmed, which is ordered to be certified to said Court. Judge Burnam delivered a separate opinion in which Judge Guffy concurs. Judge DuRelle delivered a dissenting opinion.

The opinion of the Court delivered by Judge Hobson is as follows :—

COURT OF APPEALS OF KENTUCKY.

April 6th, 1900.

W. S. Taylor, &c.,	Appellants,	Appeal from JEFFERSON Circuit Court.
vs.		
J. C. W. Beckham, &c.,	Appellees.	Common Pleas Div.

OPINION OF THE COURT BY JUDGE HOBSON.

At the November election, 1899, appellant, W. S. Taylor, and William Goebel were opposing candidates for Governor of Kentucky; appellant, John Marshall, and appellee, J. C. W. Beckham, were opposing candidates for Lieutenant-Governor. On the face of the returns Taylor received a majority of 2383 over Goebel, and Marshall a somewhat larger majority over Beckham. The State Convassing Board on the face of the returns issued certificates of election to Taylor and Marshall; Goebel and Beckham then gave notice of contest and the matter was brought before the General Assembly, which,

under the Constitution, is the tribunal to determine contests for these offices, Section 90, providing as follows:

"Contested elections for Governor and Lieutenant-Governor shall be determined by both Houses of the General Assembly according to such regulations as may be established by law."

The statute passed pursuant to this provision of the Constitution regulating the determination of such contests is found in section 1596a, sub-section 8, Kentucky Statutes, and provides that on the third day after the organization of the General Assembly a board shall be chosen by lot and have power to send for persons and papers; its decision shall be reported to the two Houses and the General Assembly shall then determine the contests.

The General Assembly convened on January 2, 1900, and on the third day after its organization, as shown by the Journals of the two Houses, a Board of Contest was appointed, pursuant to the statute. The Journals also show that on February 2, 1900, the Board in each of these contests reported to the two Houses that they had heard all the evidence offered by the contestants and contestees and that William Goebel had received the highest number of legal votes cast for Governor; that J. C. W. Beckham had received the highest number of legal votes cast for Lieutenant-Governor, and that they were duly elected and entitled to said offices. The Journals further show that on the same day both Houses with a quorum present approved and adopted separately and in joint session the reports of the Contest Board and declared that William Goebel and appellee, J. C. W. Beckham, were duly elected Governor and Lieutenant-Governor at the election referred to. Goebel and Beckham were on that day sworn in accordingly.

On January 30, William Goebel was shot by an assassin, receiving a wound from which he afterward died on February 3. On January 31, appellant, Taylor, as Governor, issued a proclamation declaring that a state of insurrection existed at Frankfort, Ky., adjourning the General Assembly to February 6, and ordering it to then assemble at the town of London, in Laurel County.

The sessions of the General Assembly, on February 2, were not held at the Statehouse for the reason that it was held by a military force of appellant, Taylor, that would not allow the Assembly to meet there, and for this reason they met on that day at the Capitol Hotel, in the city of Frankfort. On February 19, the Legislature met again at the Statehouse, and the Senate on that day adopted the following resolution:

"Whereas, on the 31st day of January, 1900, the acting Governor of the Commonwealth of Kentucky, by the use of armed force, dispersed the General Assembly, and has until recently prevented the Senate and House from assembling at their regular rooms and places of meeting, and,

"Whereas, the General Assembly and each house thereof, after public notice, met in joint and separate sessions in the city of Frankfort, a full quorum of such bodies being present, and adopted the majority reports and resolutions of the Boards of Contest for Gov-

ernor and Lieutenant-Governor of the Commonwealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant-Governor, and seating the contestants, William Goebel and J. C. W. Beckham, as Governor and Lieutenant-Governor, respectively, all of which proceedings, reports and resolutions are set out in the Journals of the two houses of the General Assembly; and,

"Whereas, This joint Assembly is now enabled to meet in its regular place of meeting, and, whilst it adheres to the belief beyond doubt that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, to remove any doubt that may exist in the minds of any of the people of the Commonwealth; now, be it

"Resolved, By the General Assembly of the Commonwealth of Kentucky, in joint session assembled, to the end that all doubt may be removed, if any exists, as to the validity and regularity of the action and proceedings at the times and places shown by the Journals of the two Houses, other than its regular rooms, provided by law, that all the acts, proceedings and resolutions of the Senate and House and of the joint assembly of the two houses upon or touching the report of the majority of the Boards of Contest for the offices of Governor and Lieutenant-Governor, unseating the contestees and seating William Goebel and J. C. W. Beckham and declaring them to have been elected Governor and Lieutenant-Governor, respectively, on the 7th day of November, 1899, is hereby re-enacted, re-adopted and re-affirmed and ratified at this, the regular place of meeting provided by law, at the seat of government in Frankfort, Ky."

This resolution, though not filed with the exhibits in these cases, is copied in the petition and is admitted by the answer to have been entered on the Senate journal. The same resolution was adopted by the House and by both Houses in joint session on February 20.

Appellants insist that all these proceedings were void and did not affect in any way their right to the offices of Governor and Lieutenant-Governor. A great many matters have been presented in the argument, but only such as seem decisive can be considered without unduly extending this opinion. It is insisted:

1. That the proceedings of the Legislature on February 2, are void because the Legislature had then been adjourned by the Governor until February 6 and no legal session could be held in the meantime.

2. That Goebel having died on February 3, the contest for the office of Governor thereby abated and the action of the Legislature on February 19 and 20 was, therefore, void.

3. It is averred that the Legislature took no action on February 2, and that the journals of these meetings were fraudulently made by the clerk, and pursuant to a conspiracy between certain members of the Assembly and the contestants.

4. It is averred that the General Assembly acted without evidence and arbitrarily.

These contentions will be considered in the order stated.

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1. As to the Governor's power to adjourn the Legislature.

If the Governor had the power to adjourn the legislature from January 31 to February 6, of course no valid action could be taken by it in the interim. It is, therefore, necessary to determine whether he had such power. The only authority relied on to sustain his action is Section 36 of the Constitution, which is as follows:

"The first General Assembly the members of which shall be elected under this constitution shall meet on the first Tuesday after the first Monday in January, 1894, and thereafter the General Assembly shall meet on the same day every second year, and its sessions shall be held at the seat of government except in case of war, insurrection or pestilence, when it may by proclamation of the Governor assemble for the time being elsewhere."

At first blush it must strike any one that the thing in the mind of the framers of this section was not an adjournment of the General Assembly after it had assembled, but a provision for a place of assembling. Until an Assembly is organized it cannot control its movements and in case of an insurrection or pestilence preventing it from meeting at the capital it was necessary for some one to have power to name another place at which it might assemble for the time being and organize. This seems on its face to be all the section was intended to provide for, and that it was not intended to authorize such action as was taken in this case is clear from section 80, which provides, among other things:

"In case of disagreement between the two Houses with respect to the time of adjournment he (the Governor) may adjourn them to such time as he shall think proper, not exceeding four months."

From this provision it is clear that the Governor had no power over the time of adjournment of the two Houses except in case of disagreement between them. There had been no disagreement between the two Houses here, and if the Governor could have adjourned them from January 31 to February 6 he might have made the time one month or four months, and then by a similar proclamation adjourned them again and indefinitely prevented action upon the contest.

It is also to be observed that while the Constitution gives the Governor power, with respect to the time of adjournment in case of disagreement between the two Houses, it confers upon him no such power to name another place than that in which the legislature may be sitting. Section 41 provides:

"Neither House during the session of the General Assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting."

Under familiar rules of Constitutional construction, either House by virtue of this section may with the consent of the other adjourn for more than three days, or to any other place than that in which it is sitting. It was never intended by the Constitution that the two Houses might name a time or place of adjournment, and that the Governor should also have like power; for this would be not only to create confusion but to destroy the independence of the legislative branch of the government.

By section 27, the powers of the government are divided into three distinct and independent departments, and by Section 42 the regular sessions of the General Assembly are limited to sixty legislative days. If the Governor can, without its consent, adjourn it from time to time, or from place to place, as he may see proper, he might be able to prevent it from taking any action that he might be opposed to. The legislative branch of the government more nearly represents the people than any other branch, and it is charged by the Constitution and laws of this State with many important interests directly affecting the people to secure which their independence of the executive is absolutely necessary. Section 41, above referred to, is taken literally from the Federal Constitution. After showing that Congress is with the single exception of a disagreement between the two Houses in respect of the time of adjournment, wholly independent of the President, Judge Story adds:

"In no other case is the President allowed to interfere with the time and extent of their deliberations. And thus their independence is effectually guarded against any encroachment on the part of the executive." Story on Constitutional Law, section——.

The reasons leading to the insertion of such a clause in the Constitution of the United States, and in all the Constitutions of this State, were the danger of the Executive control over the Legislature, and the fact that the Colonial governors exercised this power to destroy the effectiveness of the Colonial Legislatures. We are clearly of the opinion that the State Constitution was intended to maintain the absolute independence of the legislative branch of the government; that the power claimed by the appellant, Taylor, is in conflict with both the letter and the spirit of the instrument; and that his attempt to adjourn the Legislature from January 31 to February 6 was void, and did not interfere with the right of the Legislature to proceed with its sessions at Frankfort.

2. As to the death of Goebel.

The death of Goebel on February 3 did not affect the right of the appellee, Beckham. If Goebel was elected Governor and Beckham Lieutenant-Governor in November, Beckham, upon Goebel's death on February 3, became entitled to the office of Governor and had the right to continue the contest to secure what the Constitution guaranteed to him. So that if the Legislature had not acted until February 19, it had a right then to act upon the contest, and its action would be none the less valid because not taken in Goebel's lifetime. But as the legislative action of February 19 and 20 is assailed on substantially the same grounds as that on February 2, this view of the case is not important, as the question remains was either action valid? This brings us to the consideration of the third point.

3. As to the validity of the entries in the Journal and the effect to be given them.

It is alleged that the Journals are fraudulent, the work of a conspiracy between the clerks of the two Houses, certainly of the members and the contestants, and that the facts shown by the Journals as to the presence of the members of the two Houses, and the action taken by

them, are untrue. The question is, therefore, can the court hear evidence of this character assailing the integrity of the Legislative Journals? Section 40 of the Constitution provides:

"Each House of the General Assembly shall keep and publish daily a Journal of its proceedings; and the yeas and nays of the members on any question shall at the desire of any two of the members elected be entered on the Journal."

The Journal of each House of the General Assembly kept pursuant to this provision of the Constitution under the supervision of the House, is, when approved by the House, not the act of the clerk but the act of the House itself, and is entitled to the same respect as any of its other official acts. So far as we have seen, the authorities are uniform that evidence can not be received in court to impeach the verity of the record provided by the Constitution as evidence of the Legislative proceedings. Thus in Cooley on Constitutional Limitation, page 220, it is said:

"And although it has sometimes been urged at the bar that the court ought to inquire into the motives of the Legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the judiciary and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude any inquiry into the motives of the Governor in the exercise of a discretion vested in him exclusively. He is responsible for his acts in such a case not to the court but to the people."

In Wright v. Defreese, 8 Indiana, 298, which was a *quo warranto* proceedings involving the exercise of a franchise under an act of the General Assembly, it was alleged that the act was secured by fraud, corruption and bribery. The court refused to hear the evidence. It said:

"The powers of the three departments are not merely equal—they are exclusive in respect to the duties assigned to each. They are absolutely independent of each other. It is now proposed that one of the three powers shall institute an inquiry into the conduct of another department, and form an issue to try by what motives legislators were governed in the enactment of a law. If this may be done, we may also inquire by what motives the Executive is induced to approve a bill or withhold his approval, and in case of withholding it corruptly by our mandate compel its approval. To institute the proposed inquiry would be a direct attack upon the independence of the Legislature and a usurpation of power subversive of the Constitution."

A similar question was presented in McCulloch v. The State, 11 Indiana, 424, where not only fraud, corruption and bribery were alleged, but also that one member of the Assembly whose vote was recorded in the affirmative in fact voted in the negative, and that without his vote the bill did not receive a constitutional majority. The court said:

"The facts thus alleged, raise the question, whether the Journals of the Houses of the General Assembly can be contradicted or impeached on the ground of mistake or fraud. The affirmative of this

inquiry cannot, in our opinion, be maintained. Article 4, section 12, of the Constitution requires each House to keep a Journal of its proceedings, and publish the same. This Journal must be held conclusive evidence of the facts which appear on its face; because it must be presumed that the members, as a body, inspected it and made all necessary corrections, before they allowed it to assume the character of a Journal of their proceedings. As well might evidence be received to contradict a statute, to show that it contained certain provisions inserted through mistake, as to contradict an entry made upon the Journal. The House keeping the Journal is the only tribunal by which it can be corrected, and until corrected by such authority it must be considered conclusive as to the facts which it contains. The State v. Moffit, 5 Ohio R., 358—Turley v. Logan County, 17 Ill. R., 151.

We must, therefore, hold that the members alleged to have been absent when the bill passed over the Governor's veto, were present and voted as averred in the Journal; and that McMurry did vote in favor of the bill on its final passage in the House."

In the case of State v. Moffit, 5 Ohio State, 358, above referred to, the question was whether Lemuel Moffit had been elected judge of the Common Pleas Court by the General Assembly. The Senate Journal showed his election by the Senate, but the House Journal showed the election of Samuel Moffit. Depositions from members and officers of the General Assembly were offered to prove that Lemuel and not Samuel Moffit was the individual actually voted for and elected in the House, but the court held the evidence inadmissible to impeach the Journal, and that Lemuel Moffit was not entitled to the office. The court said:

"In the ninth section and first article of the Constitution it is required that each house shall keep a Journal of its proceedings and publish them. This Journal when taken in connection with the laws and resolutions, would seem to be the appropriate evidence of legislative actions. It is not the action of a single member of the Legislature of which I speak but of the whole body of the General Assembly. The former might with propriety be proven by parol testimony, but the latter is evidenced by evidence of a higher nature. The testimony of an individual member could not be received to contradict a statute, and if not, why receive it to contradict an entry upon the Journal?"

In Wise v. Bigger, 79 Va., 269, it was alleged that only nineteen Senators voted aye on the passage of the bill and that it did not receive in fact the affirmative vote of two-thirds of the Senators present, and never became a law, although the contrary appeared on the Senate Journal. The court said:

"In the face of this solemn record in which the Senate of Virginia certifies its proceedings—in a matter of fact—relating to its own conduct—in the apparent performance of its legal functions—this court is asked to inquire into or dispute the veracity of that certificate. To do this would be to violate both the letter and the spirit of the Constitution; to invade a co-ordinate and independent department of the government and to interfere with the separate and legitimate power and functions of the Legislature."

In a similar case, the Supreme Court of Pennsylvania also said: where fraud and corruption were charged on the Legislature, and the court was asked to hold its action void for this reason:

"We can not hesitate a moment on this question. We have no such authority and ought not to have. However far the Legislature may depart from the right line of Constitutional morality we have no authority to supervise and correct their acts on the mere ground of fraudulent or dishonest motives. We know of no such check upon legislation and would not desire to see such a one instituted. The remedy for such an evil is in the hands of the people alone, to be worked out by an increased care to elect representatives that are honest and capable. If the judiciary have such authority, then every justice of the peace is competent to sit in judgment upon every act of legislation which disorderly moralists or knavish or ignorant anarchists may choose to charge as fraudulent. Nay more, if the question be raised in a judicial proceeding, the judges and justices of the peace will be bound to investigate and decide it; and the principal judicial business might become that of testing not cases by the standard of the law, but the standard itself by the infinitely various and uncertain judicial notions of morality."

Any number of similar quotations may be made from other State Courts. The decisions are all uniform. The same rule has been applied by the United States Supreme Court. (Fletcher v. Peck, 6 Cranch, 87; ex parte McCardle, 7 Wall., 506; United States v. Old Settlers, 148 U. S., 466; United States v. Des Moines Co., 124 U. S., 544.) In the case last cited, the court said that:

"The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge and in good faith."

The learned counsel for the appellants do not question the soundness of these decisions but seek to distinguish them from the case before us on the ground that appellants have a pre-existing right, and that the rule referred to only applies to legislative acts operative for the future. But none of the cases rest on this ground. The ground of all the decisions is that the judiciary have no power to sit in judgment upon the motives of an independent branch of the government, or to deny legal effect to the record of its action solemnly made by it pursuant to the Constitution. If this were allowed, it would soon follow that the independence of the Legislature would be destroyed altogether. When our system of government was formed, not a few publicists pronounced it impracticable, and foretold that sooner or later one of the three equal departments of the government would overshadow and supervise the others. So far these prophecies have proved groundless, but if the contention of appellants were sustained, this court would, in substance, assume supervisory power over the action of the Legislature, and as our jurisdiction is only appellate, the same power might be exercised by every subordinate court in the State in cases within its jurisdiction.

The Constitution of this State creates the offices of Governor and Lieutenant-Governor. It provides how they shall be filled by elec-

tion. It also provides how the result of that election shall be determined. In each of the four constitutions of this State the General Assembly has been made the exclusive tribunal for determining this matter. This shows a clear and settled purpose to keep this political question out of the courts. We have no more right to supervise the decision of the General Assembly in determining the result of this election than we have to supervise the action of the Governor in calling a special session of the Legislature, or in pardoning a criminal, or the action of the Legislature in contracting debts, or determining upon the election of its members, or doing any other act authorized by the Constitution.

There is no conflict between the action of the State Canvassing Board and that of the Legislature in these cases. The State Canvassing Board were without power to go behind the returns. They were not authorized to hear evidence and determine who was in truth elected, but were required to give a certificate of election to those who on the face of the returns had received the highest number of votes. For the State Board to have received evidence to impeach the returns before them would have been for them, in effect, to act as a Board for trying a contested election, and if they had done this they would have usurped the power vested in the General Assembly by the Constitution; for by its express terms only the General Assembly can determine a contested election for Governor and Lieutenant-Governor.

But the certificate of the State Board of Canvassers is no evidence as to who was in truth elected. Their certificate entitles the recipient to exercise the office until the regular constitutional authority shall determine who is the *de jure* officer. The rights of the *de jure* officer attached when he was elected, although the result was unknown until it was declared by the proper constitutional authority. When it was so declared it was simply the ascertainment of a fact hitherto in doubt, or unsettled. The rights of the *de facto* officer, under his certificate from the Canvassing Board, were provisional or temporary until the determination of the result of the election as provided in the Constitution, and upon that determination, if adverse to him, they ceased altogether. Such a determination of the result of the election, by the proper tribunal, did not take from him any pre-existing right; for if not in fact elected, he had only a right to act until the result of the election could be determined.

We are, therefore, unable to see how this case can be distinguished from any other legislative action taken in a matter over which the Constitution has given the Legislature exclusive jurisdiction, and are, therefore, of the opinion that the courts are without jurisdiction to go behind the record made by the Legislature under the Constitution. Such a record seems to us entitled to every presumption in its favor that the records of this court kept under its supervision would be entitled to receive at the hands of the Legislature in a matter before it.

4. As to the action of the Assembly being void because without evidence and arbitrary.

The report of the Contest Board to the General Assembly shows that it heard the evidence offered by the contestants and contestees,

but the report does not on its face show that the evidence taken by the Board was submitted by it to the General Assembly. The Journals also fail to show this fact. It is insisted that, therefore, the General Assembly acted without evidence in determining the contest. But there is a clear distinction between the failure of the Journal to show a fact where the Journal is merely silent on the subject and a fact expressly shown in the Journal. Here the Journals are only silent as to what evidence the General Assembly heard, and as it was a question requiring evidence for its proper determination, it must be presumed that the Legislature did its duty and had before it such evidence as was satisfactory to it. Thus in Cooley on Constitutional Limitation it is said, in disposing of the question of the constitutional power of the Legislature:

"In any case in which this question is answered in the affirmative, the courts are not at liberty to inquire into the proper exercise of power. They must assume that the legislative discretion has been properly exercised. If evidence is required, it must be supposed that it was before the Legislature when the act was passed, and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding."

In MucColloch v. State, 11 Indiana, 433, the court well said:

"Presumptions are often indulged in support of the proceedings of courts; and it would be difficult to perceive why their proceedings should be entitled to more favor than those of the Legislature. It has been repeatedly decided that where the record of a court possessing general powers is silent as to whether a party defendant had notice of suit it will be presumed that the steps necessary to give jurisdiction of the person were properly taken. There is indeed no reason why legislative records should be more full and perfect than judicial."

In those States where the enrolled bill is not held conclusive, it is uniformly held where the Journals are merely silent that the presumption is absolute that the required steps were in fact taken. (Lafferty v. Huffman, 99 Ky., 88.)

Under these principles it must be presumed that the Legislature in the case before us did its duty. A copy of the proof taken before the Contest Board has been filed with the record comprising about seventeen hundred typewritten pages. Of course it is not presumed that each member of the Legislature read all this. It is only meant that the Legislature should learn the facts of the case from those appointed for that purpose, for this is all that is practicable in such bodies. There is nothing in the record before us to raise the presumption that this was not done.

It is also insisted that the notice of contest was insufficient and that the evidence was equally insufficient, but these were matters to be determined by the Legislature, which the Constitution has made the sole tribunal to determine such a contest. Whether their decision in these matters was right or wrong we have no power to inquire. In the distribution of the powers of the government, certain power was, by the Constitution, assigned to the courts, and other powers to

the General Assembly. For us to attempt to review its action would be as improper as for it to interfere in a case that this court has decided. It is said that if this is true, great injustice might be done by the Legislature. To this, the Supreme Court of Indiana, in Evans v. Brown, 30 Indiana, 514, responded thus:

"Public authority and political power must of necessity be confided to officers who being human may violate the trust reposed in them. This, perhaps, can not be avoided absolutely but it applies also to all human agencies. It is not fit that the judiciary should claim for itself a purity beyond others; nor has it been able at all times with truth to say, that its high places have not been disgraced. The framers of our government have not constituted it with faculties to supervise co-ordinate departments and correct or prevent abuses of their authority. It can not authenticate a statute. That power does not belong to it, nor can it keep the legislative journal———. It is neither modest nor just for judges thus to impeach the integrity of another department of government, and to claim that the judiciary only will be faithful to its obligation."

Speaking of contested elections for public office, this court, in Batman v. Megowan, 1 Met., 538, said:

"The law has designated the manner in which such questions shall be ascertained and determined. A Board is to be constituted as prescribed by the statute to examine the poll books and issue certificates of election. Another Board is to be organized in the case of a contested election, for determining the contest between the claimants. Upon this last mentioned Board the law devolves the duty and confers the power of deciding who is entitled to the office. The courts have no right to adjudicate upon these questions or to decide such contests."

In the later case Stine v. Berry, 96 Ky., 63, this court again said:

"We understand and so adjudge that the statute in regard to contested elections for State and county offices is exclusive ——. Such statutes are enacted with remedies providing for the speedy determination of such questions and to take from the courts all original supervisory power over such contests." (See also Anderson vs. Sikens, 20 Ky. L. R., 1004; Booe v. Kenner, 20 Ky. L. R., 1343.)

This whole subject was fully examined in the case of Baxter v. Brooks, 29 Arkansas, 173, which was, like this, a contest for the office of Governor. The court said:

"The office of Governor does not exist by virtue of the common law. It is a creation of the Constitution. And it is well settled that where a new right, or the means of acquiring it, is conferred by a Constitution, or a statute, and an adequate remedy for its infringement, is given by the same authority which created the right, the parties injured are confined to the redress thus given."

In review of this contest quoted in the opinion, Judge Cooley said, (page 186):

To our mind, there can be no plausible suggestion that the decision of the General Assembly on such a contest is open to judicial review afterwards; but it may not be inappropriate to refer to Grier v. Shack-

elford, S. C. Const. R., 642; Batman v. McGowan, 1 Met., (Ky.) 533; State v. Marlow, 15 Ohio St., 134; People v. McGoodwin, 22 Mich., 496, *et al.*, as in point."

It is also argued that the Contest Board was not fairly drawn by lot; that certain of the Board were liable to objection on the score of partiality, and that, therefore, this Board was not properly constituted. If any of these objections were well founded, the General Assembly had full power to take such action as was proper in the premises. It does not appear that any of the objections urged were presented to the General Assembly, but if they were and it refused to make a correction, it must be presumed that it had sufficient reasons for its action. Besides, the Board was only a preliminary agent to take evidence and report the facts to the General Assembly. The Assembly itself finally determined the contest.

It is also argued that under the specifications of the notice of contest, if all were true, the election was void, and the General Assembly should have so determined. But we have no means of knowing that the General Assembly reached such a conclusion. The presumption is in favor of their judgment, and when they have found as a fact that the contestants received the highest number of legal votes cast at the election in controversy, we are not at liberty to go behind their finding. In Commonwealth v. Jones, 10 Bush, 725, the board found that Jones had accepted a challenge to fight a duel, and was, therefore, disqualified to hold office. But as under the Constitution a conviction of the offense was necessary to disqualify Jones from holding office, this court disregarded the finding of the board, for the reason that it related only to an immaterial matter. In this case, however, the Legislature finds the part that determines the rights of the parties. There is nothing in their finding to show the election was void. And as we can not go behind it (10 Bush, 747–8) the cases of Nemon vs. Hinton, 1 Duv., 38, and Pendleton v. Hocker, 100 Ky., 726, have also no application.

It is also insisted that the legislative proceedings are in violation of the Fourteenth Amendment to the Constitution of the United States which provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law."

The office of Governor being created by the Constitution of this State, the instrument creating it might properly provide how the officer was to be elected and how the result of this election should be determined. The provisions of the Constitution on this subject do not abridge the privileges or immunities of citizens of the United States. Such an office is not property, and in determining merely the result of the election, according to its own laws, the State deprives no one of life, liberty or property. In creating this office, the State had a right to provide such agencies as it saw fit to determine the result of the election, and it had a right to provide such a mode of procedure as it saw fit. It is wholly a matter of State policy. The people of the

State might, by an amendment to their Constitution, abolish the office altogether. The determination of the result of an election is purely a political question, and if such suits as this may be maintained, the greatest disorder will result in the public business. It has always been the policy of our law to provide a summary process for the settlement of such contests, to the end that public business shall not be interrupted; but if such a suit as this may be maintained, where will such a contest end? To illustrate, section 38 of the State Constitution, provides:

"Each House of the General Assembly shall judge of the qualifications, elections and returns of its members, but a contested election shall be determined in such manner as shall be directed by law."

Whatever inherent power either House might have had to determine the election of its members, if the Constitution had been silent, its power under this section is limited to the grant. It will be observed that the phraseology is substantially the same as Section 90 relating to contested elections of Governor and Lieutenant-Governor. Suppose these suits had been brought by two members of the General Assembly, alleging, in effect, the same facts as are alleged in this case, would anybody suppose that the judiciary of the State would have the power to go behind the legislative journals, or to supervise the propriety of the legislative action in determining the election of its members? Could a member of the General Assembly, who had received a certificate from the Canvassing Board, and been afterwards ousted from the House to which he belonged, on a contest, allege and show that the House had acted arbitrarily, depriving him of a pre-existing right and denying to him the emoluments of the office for the term? Could it be maintained that such action by either House of the General Assembly violated any protection afforded him by the Constitution of the United States, or that for this cause the action of the State authorities under the State Constitution by virtue of which he claimed to have been elected, might be annulled?

This question was presented to the United States Supreme Court in Wilson v. North Carolina, 169 U. S., 586, where an officer arbitrarily removed from office, applied to that court for redress. His case was dismissed for want of jurisdiction. If the State may arbitrarily remove an officer once appointed, we see no reason why it may not provide such means as it sees proper for the determination of its own elections. If it has not such power, then its sovereignty as a State exists only in name. The Congress of the United States has, by the Constitution, the power to judge of the qualifications, elections and returns of its members. In not a few cases it has been supposed to have acted arbitrarily in such matters, but it was never maintained that one who was ousted of his seat in Congress on a contest, could take the matter into the courts to supervise the action of Congress on such grounds as are alleged in this case. Yet the power of Congress, under the Constitution, in determining which of two claimants was in fact elected to a seat in that body, both being admittedly qualified, is under the Constitution just the same as the power of our General Assembly in determining a contested election for Governor and Lieutenant-Governor.

It is earnestly argued that the General Assembly was wrong in its decision of this case, and that it is a very serious matter thus to overthrow the will of the people. Whether the Assembly was right or not, in its decision, it is not our province to determine. But a much more important question is involved in the case which is the integrity of our form of government as founded by our forefathers. If the action of the Legislature may be disregarded by the courts, then it is no longer an equal and independent branch of the government within its constitutional jurisdiction, but the courts become the final depository of the supreme power of the State. Judicial tyranny is no less tyranny because couched in the forms of law. There was great wisdom in dividing the powers of a Republic between three equal and independent sets of officers. One operates as a check upon the other, and no greater blow to the perpetuity of our institutions could be given than to destroy this check.

For these reasons, we are of opinion that the courts of this State are without authority to enter into the inquiry sought in this case, and that the journals of the General Assembly are conclusive of the controversy. The judgment of the lower court, being in accordance with these views, is, therefore, affirmed.

The separate and dissenting opinions herein are as follows:—

COURT OF APPEALS OF KENTUCKY.

W. S. Taylor, &c., Appellants.
v. APPEAL FROM JEFFERSON CIRCUIT COURT.
J. C. W. Beckham, Appellees.

Opinion by Judge Burnam:—

The general demurrer to the answer and amended answer of contestees, which was sustained by the chancellor in this proceeding, admits that on the 9th day of December, 1899 W. S. Pryor, as Chairman, and W. T. Ellis, as Member, of the State Board of Election Commissioners, certified that William S. Taylor and John Marshall had received the highest number of votes given for the offices of Governor and Lieutenant-Governor respectively, and were duly and regularly elected to fill these offices for the term prescribed by the Constitution; that at the election under the operation of the statute known as the "Goebel Election Law" the entire election machinery of the State was in the hands of the friends and partisans of contestants; that all of the election officers from the highest to the lowest were selected by the State Board of Election Commissioners, or by their appointees; that the members of the State Board of Election Commissioners were themselves fellow-partisans of contestants; that by the action of the election

officers on the day of the election contestees were illegally, and in many cases fraudulently deprived of a large number of votes in the various voting precincts of the State; that subsequent to the election contestants had entered into a conspiracy with divers members of the Legislature to nullify this election of the people by the institution of a fraudulent contest before them; that pursuant to this conspiracy so entered into the contest boards were selected by a fraudulent device, not by lot as required by law; that as a result of this trick ten out of the eleven members selected for the trial of the Governor's contest were partisans of the contestant, and nine out of the eleven members selected as a contest board for the trial of the Lieutenant-Governor's contest were partisans of the contestant; that a number of the members of the General Assembly selected on both of these contest boards were disqualified from sitting, on the ground that they had advised that such contests should be made and had promised to render them effective; that at least one member of the board selected to try the contest for the office of Governor had wagered money on the result of the election; that the contest boards in the trial of the contests had acted throughout in an illegal, tyrannical and arbitrary manner in the admission and rejection of testimony, and in the whole conduct of the trial; that they did not report to the General Assembly any of the testimony which had been taken upon the trial, and that the General Assembly at the time they approved the decisions of the contest boards did not have a particle of testimony before them, were not familiar with the facts, refused to hear argument, held their alleged meeting at which the contests were determined at a secret place without the knowledge of either contestees or more than one-third of the entire membership of the General Assembly, who were thereby excluded from any participation in the action so taken at the time of the alleged determination of the contests in favor of contestants. It is also admitted that at the time the alleged action was taken by the General Assembly, on the 2nd day of February, 1900, the Legislature had been previously adjourned by the Governor to meet in London, Kentucky.

It is hard to imagine a more flagrant and partisan disregard of the modes of procedure which should govern a judicial tribunal in the determination of a great and important issue than is made manifest by the facts alleged and relied on by contestees and admitted by the demurrer filed in this action to be true, and I am firmly convinced, both from these admitted facts and from knowledge of the current history of these transactions, that the General Assembly in the heat of anger, engendered by the intense partisan excitement which was at that time prevailing, have done two faithful, conscientious and able public servants an irreparable injury in depriving them of the offices to which they were elected by the people of this Commonwealth; and a still greater wrong has been done a large majority of the electors of this Commonwealth who voted under difficult circumstances to elect these gentlemen to act as their servants in the discharge of the duties of these great offices. But we are met at the threshold of this case with the contention that the courts of the State, under the limitations

imposed by the Constitution, have no power to go behind the legislative journals and review the judgment of the General Assembly in a proceeding over which they are given by the Constitution exclusive jurisdiction, and from whose determination of the question no appeal is provided.

The Constitution defines the duties and limits the powers of each of the three coordinate departments of government, and in the discharge of these duties and exercise of these powers each department must of necessity be independent of the other so long as they remain within the Constitutional limitations, and "no person or collection of persons being of one of these departments can exercise any power properly belonging to either of the others, except in the instances expressly directed or permitted." (See secs. 27 and 28 of the Const.) By section 90 of the Const. the determination of contested elections for the offices of Governor and Lieutenant-Governor is imposed upon the General Assembly, to be exercised in accordance with such regulations as may be established by law. Pursuant to this provision of the Constitution the Legislature has, in sec. 1531 and subsecs. thereunder of the Ky. St., prescribed the regulations for their guidance in the determination of such contested elections; and it appears from the exhibits filed with the petition that the General Assembly have pursuant to these regulations decided the contests for the offices of Governor and Lieutenant-Governor in favor of the contestants, and if no appeal or power to review their finding is given to the courts by the Constitution, which is the basis of all power both in the Legislature and in the courts, their finding would seem to be conclusive of the question. Similar questions to that at bar have been before this court in quite a number of cases, beginning with the celebrated case of Batman vs. Megowan &c., 1 Met. 533, in which the opinion was written by one of the ablest and most celebrated lawyers which ever adorned this bench, and after a careful consideration of all of these cases, and numerous authorities which have been cited from elementary writers and courts of last resort in other States, I have been led with some reluctance to the conclusion, and not without some misgivings as to its correctness, that there is no power in the courts of the State to review the finding of the General Assembly in a contested election for the offices of Governor and Lieutenant-Governor as shown by its duly authenticated records.

Many questions have been raised and discussed with great ability by learned and eloquent counsels for appellants, but it will be unnecessary for me to consider them in view of the conclusion which I have reached on this fundamental question.

I concur in and adopt the foregoing as my view of the question involved. B. L. D. Guffy.

Taylor, &c., Appellants.
v. DISSENTING OPINION BY JUDGE DURELLE.
Beckham, &c., Appellees.

Since Kentucky has had a government, the powers of the government have been divided into three distinct departments, and each of them is *confined* to a separate body of magistracy, to-wit, those which are legislative to one, those which are executive to another, and those which are judicial to another. These departments are co-ordinate and co-equal. The magistracy of each department is confined to its own powers and duties. As a matter of course, and the nature of things, these co-ordinate departments are in some respects, interdependent. From the very nature of things it results that while the legislative branch is supreme in saying what shall be law, and the Executive in the execution of the laws enacted by the Legislature, the power must rest *somewhere*, of saying whether those departments have exceeded their powers, or have assumed powers which properly and constitutionally belong to another department. Were the sections of the Constitution, 27 and 28, the only ones which limited the powers of the departments, such inquiry and determination would be limited to the decision of whether any of the three departments had transgressed upon the domain of one of the others. But the Constitution contains other limitations, and contains also grants of power which are exceptions to the fundamental division of powers. One of these exceptions is the grant to the Legislature of power to determine contested elections for Governor and Lieutenant-Governor. In section 90 it is provided "contested elections for Governor and Lieutenant-Governor shall be determined by both houses of the General Assembly according to such regulations as may be established by law." This is a grant to one of the departments, of power which under the general division would not belong to it. A contest is a litigation over a right. The decision of a litgation over a right claimed by one party and denied by another, is in its essence, judicial. In the absence of express grant of power to the members of the body of magistracy who constitute the legislative department, they could not exercise this power. Therefore, when power of this description, judicial in its essence, is by the organic law delegated to the members of that body of magistracy, there is no implication of a grant beyond the letter of the granting clause, except as to such matters as are of necessity implied in the grant, and essential to the execution of the power. But this grant is not merely a grant of power it is a grant of power with express limitations. It endows the persons who constitute the body of magistracy to whom are confided legislative powers, with an additional power taken from the judicial department, and by the terms of the grant subjected to two limitations. One limitation is made by the statement of the power which is granted. The grant is of power to determine contested election for these two offices. The word "contest" as used in Constitutions and statutes is a word of art having a well defined meaning. It means a litigation between two parties who claim property or right. It carries with it distinctly the idea of a

plaintiff, a defendant, and a thing in controversy. A contested election is a controversy between two over the question which one of them was elected—which one of them received the highest number of legal votes at the election. That is a contest, and that, in the nature of things, is all that an election contest can be. The second limitation in the grant is that contested elections for these offices shall be determined by the grantees of this power "according to such regulations as may be established by law." Accordingly, we find that regulations have been established by law regulating the procedure, and providing for pleadings. A notice in writing must be given, within a limited time, must state the ground of contest and none other shall be heard as coming from such party. (Section 1535, Kentucky Statutes.) This notice is the declaration or petition. The same rule which applies to all other litigations applies to this. An issue must be made, either by the law or by the pleadings of the parties. In this litigation it is provided that it may be made in either way. A counter-notice equivalent to an answer or plea may be given, or if not given the law denies the averments of the declaration, and the contestee may defend without actually filing a counter-notice. Other regulations of a procedure in determining such a litigation are established by law but they are not material to the present discussion except as they tend to further illustrate the fact that this is a litigation before a tribunal.

In exercising the powers granted of determining this contest, the Legislature was a mere contest board exercising powers granted with both express and implied limitation, and powers which were not in any sense legislative. The Legislature was as to this matter a tribunal created by the Constitution to try a litigation. In the exercise of this power, this tribunal was confined to the jurisdiction conferred. If it went beyond its jurisdiction, its action was void—just as void as if it had undertaken to grant a divorce in defiance of the constitutional inhibition, or as would be the judgment of a county court to sell land in Switzerland. Now comes the question, who can determine whether this contest board has exceed its jurisdiction and upon what evidence of transgression can this determination be made? In the nature of the government it must be that this power rests with the courts, and with the courts alone. Universally it is conceded that this power of determination whether one of the departments has gone beyond its jurisdiction as defined by the Constitution, or has transgressed Constitutional inhibitions upon its exercise, rests with the courts. In arriving at their determination upon a question of this kind, there is much dispute as to what evidence the courts may consider, and to what extent such evidence is conclusive upon them. But in the nature of the government, it is essential that the *power* of determining whether constitutional limitation have been transgressed, is with the courts, and the courts only. If the Governor issues an edict and undertakes to enforce it as law, the courts will declare it void. If the Constitution limited his power of pardon to specific cases and inhibited its exercise in others, the courts would declare a pardon of one of the forbidden offenses void. It has been reiterated so many times that the repetition is wearisome, that the courts will not lightly nor in a doubtful case, hold

the action of a coordinate branch of the government, unconstitutional; but, on the other hand, it has often been held that when convinced that the legislature has exceeded its power — has violated the inhibitions of the Constitution — or invaded the powers of coordinate branches of government, no court will hesitate to declare that the Legislature acted without jurisdiction, and its action was unconstitutional and void, and this is done as to matters purely legislative. But in this matter the Legislature or its members are not acting as a Legislature. They are acting as a contest board. Now if this contest board exceeds its jurisdiction, there can be no question of the power of the courts to inquire into the validity of its determination, and to say whether that determination, that judgment was valid or void. Commonwealth v. Jones 10 Bush, 725.

In this case a suit is brought to recover an office, and as the basis for such recovery, a record is relied upon—the record of a so-called trial and determination by the Legislature sitting as a Contest Board. Upon this record it is claimed that the contestant appears entitled to the office of Governor. What does the record show? It shows that the contestee was duly certified to have received the highest number of votes as shown by the returns, and was thereupon duly inducted into office. After his qualification, his title to the office was perfect I do not care whether after the notice of contest was given it be said he was Governor *de jure* or Governor *de facto*. Until that notice was given he was Governor by undisputed title. The record then shows that a notice of contest was given contesting the election, and claiming the office upon the ground that in the city of Louisville and some forty counties there was no legal election; that the election was void; that in the metropolitan city of the State—the equivalent in population and voters of thirty or forty counties of ordinary size; the election was void because of intimidation by the military, and interference by the judiciary, and no valid election was held there; that in some forty counties of the State the election was void because in violation of the law thin ballots were used. All other grounds alleged in the notice are merely cumulative to these, and the averment that the original contestant was duly elected is a mere deduction from the averment that the election in these counties was void. Now if this be true, and upon the verity and sufficiency of these averments the record stands, there was no election in Kentucky; for the Constitution provide that the Governor shall be elected by the qualified voters of the State; and if the declaration of notice in this record is true, the qualified voters of the State had no election, for somewhere in the neighborhood of fifty per cent of the qualified voters of the State either had no opportunity to vote legally, or were intimidated from exercising the right of sufferage freely. The notice, therefore, in substance, alleges that there was no election in the State of Kentucky, and that therefore, the contestant was entitled to the office. This is the fair construction of the language used in the notice. This is what the record relied on shows, and this record and the judgment which was claimed to be rendered upon it, is the basis of this litigation to secure the actual possession of the office. The record on which this suit is brought shows on its face

that the question presented to the tribunal which rendered the decision, was not one which it had jurisdiction to try. It had jurisdiction to try a contest. The only authority given to it was to try the question which candidate received the highest number of votes. A Contest Board cannot try the question whether there was an election, or whether an election was void. That is not for its consideration. The only question a Board of Contest has authority to try is which of the two litigants received the highest number of legal votes cast. That question was not presented to it, and its action upon any other question was a nullity—as much a nullity as if it had undertaken to grant the contestant a divorce upon an averment that the election was void. Where there is a lawful election in a part only of the territory over which the election should be held, the election is void in its entirety. People v. Salomon, 46 Ill., 415. See also Howes v. Perry, 17 S. W. 575.

Now if the election was void because it was not free and equal in the whole or any substantial part of the territory; because in any considerable extent of the territory the voters were prevented by intimidation of troops or judges from exercising freely their right of sufferage; because in any considerable extent of the territory the officers of election did not do their duty, and violated the requirements of the Constitution as to secrecy in the ballot, and thereby deprived the voters of the privilege of legally casting their votes—what tribunal can decide the question that there was no election. The most recent utterance of this court is the case of Hocker v. Pendleton, 100 Ky., 726. That case was a bill in equity to declare an election void because sufficient ballots were not furnished by the officers to enable all the voters to express their preferences, and therefore, the election was not free and equal. The sole authority relied on by counsel who sought to have the election declared void, was the case of Leeman v. Hinton, 1 Duvall, 37. In the Hocker case this Court held distinctly that a court of Equity had the power to declare that there had been no election. The averments in the record relied on in this suit admit of the application of no other remedy. It is not a contested election. It is a litigation of the question whether there was an election, or not. It is not a litigation over an office. It is a litigation to determine whether any office was filled by the people. Properly this jurisdiction, as is abundantly shown by the cases of Leeman v. Hinton and Hocker v. Pendleton, belongs to Courts of Equity. Now it is true that in Wilson v. Hines, 99 Ky., 221, one division of this court held that where an election tribunal decided that the law under which the election contested was held, was unconstitutional, it was not exceeding its powers. This was a short-cut to practically the same end which might have been obtained by the proper procedure. The Contest Board decided the Act under which the election was held to be unconstitutional and dismissed the contestant's case. What it ought to have done was to refuse to act at all upon the ground that no election had been held; for an election under an unconstitutional law is no election. When the case was appealed, the appeal should have been dismissed, for the proper procedure of the party who thought himself aggrieved, was by

mandamus to compel the election board to act. The practical result however, was the same, and this Court in the subsequent appeal affirmed the judgment of the Circuit Court. But in the Hocker case the court returned to the true doctrine that the question whether an election had been held at all, or whether the election attempted to be held, was void, was a matter for Courts of Equity to determine, as has been the law of Kentucky for forty years and was the undisputed law at the time the present Constitution was adopted by the people. It is objected that the Legislature is given plenary power to determine a contested election as to these two offices, and that having determined it, no inquiry can be made into the regularity of the procedure. If section 90 had read "elections for Governor and Lieutenant-Governor shall be determined by both Houses of the General Assembly," this would be a grant of plenary power and there would be no question in this case except the question whether the action of the Legislature had been the exercise of arbitrary power, or had been taken as to the contestee without due process of law. But it is a power with limitations, given to a Contest Board. The question is not here presented whether the courts shall interfere to prevent the exercise of legislative power. It is a question whether that body acting not as Legislature, but as a Board of Contest, has acted within its jurisdiction. In its delicacy as to invading the jurisdiction of the coordinate legislative branch of the government, this court seems to me to have been somewhat overnice. No question of the propriety of infamy of a legislative act has been suffered to resolve doubt of its constitutionality into certainty. Neither the criminal purpose of the present election law, nor its potential spawn of force and fraud, now realized, availed to engender anything beyond mild doubt of its constitutionality. But it should be remembered that while the Legislature is coordinate and coequal, the judiciary has rights also. It is also a coordinate and coequal branch of the government and should be a little jealous of its own rights; and one of the essential rights of the judiciary is its right and power, not only to restrain itself within constitutional limitations but to announce when other departments go beyond them; to say finally and authoritively when either of the other branches of the government has exceed its jurisdiction.

In my opinion the record upon which the petition in this case is based, shows on its face affirmatively that the Board of Contest had no jurisdiction of the matter which it undertook to try. It is not a mere defective notice. It excludes the possibility of jurisdiction. I think, therefore, that the demurrer to the answer should have been carried back to the petition and sustained.

The brief time between the consultation and the delivery of the opinion renders it impossible for me to discuss any of the questions involved in this case, except the question of jurisdiction of the contest Board, and that but briefly. There are many questions of grave interest which I should be glad to discuss if time permitted, notable the question whether the procedure described at length in the answer in this case, afforded the contestee the due process of law guaranteed by the Federal Constitution, and the question whether the action of the Contest Board was the exercise of arbitrary power.

Afterwards on April 7th, the appellants and plaintiffs in Error filed in the Clerk's Office of the Court of Appeals, their writ of Error as follows, (a copy of which remains on file in the Clerk's Office):

UNITED STATES OF AMERICA,
DISTRICT OF KENTUCKY,
SIXTH JUDICIAL DISTRICT. } ss.

THE PRESIDENT OF THE UNITED STATES,

To the Honorable the Judges of the Court of Appeals of Kentucky, Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, being the highest Court of law or equity of said State in which a decision could be had in a suit between Wm. S. Taylor and John Marshall, appellants, and J. C. W. Beckham, L. H. Carter and John B. Castleman, appellees, wherein was drawn in question the validity of a Statute or Constitution, of, and an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, and where a right, title, privilege and immunity were claimed under the Constitution of the United States, and the decision was against the right, title, privilege and immunity specifically set up and claimed under said Constitution, a manifest error hath happened to the great damage of the said William S. Taylor and John Marshall, and the people of Kentucky whom, in their pleadings in said cause, they claim to represent, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington in the District of Columbia on the seventh day of May next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of U. S. Circuit Court.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of April, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth.

W. G. CHAPMAN,
Clerk of the Circuit Court of the United States, for the District of Kentucky.
By F. R. Wiard, D. C.

ALLOWED BY
JAMES H. HAZELRIGG,
Chief Justice Court of Appeals of Kentucky.

On the same day the plaintiffs in Error filed in the Clerk's Office their bond and assignment of Errors as follows:

COURT OF APPEALS OF KENTUCKY.

William S. Taylor, and John Marshall, Appellants,
vs.
J. C. W. Beckham, Appellee.

Know all Men by These Presents,

That we, William S. Taylor and John Marshall, and the Fidelity and Deposit Company of Maryland are held and firmly bound unto J. C. W. Beckham in the sum of Twenty-five hundred dollars, to be paid to the said J. C. W. Beckham, his executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this seventh day of April, A. D. 1900.

Whereas, the above named William S. Taylor and John Marshall have prosecuted a writ of Error from the Supreme Court of the United States to the Court of Appeals of Kentucky to reverse the Judgment rendered in the above entitled suit, by the Court of Appeals of Kentucky, at Frankfort:

Now, therefore, the condition of this obligation is such, that if the above named William S. Taylor and John Marshall shall prosecute their said Writ of Error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

William S. Taylor, [L. S.]
By Helm Bruce, Attorney in Law and in fact.
John Marshall, [L. S.]
By Helm Bruce, Attorney in Law and in fact.
Fidelity & Deposit Company of Maryland, [L. S.]
By J. S. Bell, Agent and Attorney.

Sealed and delivered in presence of and
approved by James H. Hazelrigg, Chief
Justice Court of Appeals of Kentucky.

SUPREME COURT OF THE UNITED STATES.

William S. Taylor,
John Marshall, Plaintiffs in Error.
vs. (ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL).
J. C. W. Beckham, Defendant in Error.

William S. Taylor and John Marshall, plaintiffs in Error in the above styled cause say the Court of Appeals of Kentucky, in its judgment lately rendered in the case of William S. Taylor and John Marshall vs. J. C. W. Beckham, and to revise which a writ of error

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from the Supreme Court of the United States has been granted, erred in the following particulars, viz.:—

(1). It erred in holding that the action of the General Assembly of Kentucky, or contest tribunal, referred to in the petition and answer in said cause, declaring that William Goebel received the highest number of votes for Governor on November 7, 1899, and that J. C. W. Beckham then received the highest number of votes for Lieutenant-Governor, and that they were respectively elected Governor and Lieutenant-Governor of Kentucky, was due process of law; and that neither William S. Taylor nor John Marshall, nor any citizen of Kentucky was thereby deprived of either liberty or property, or of any right, privilege or immunity, without due process of law, within the meaning of the Constitution of the United States.

(2). It erred in holding that said action of the General Assembly, or contest tribunal, heretofore mentioned, did not deprive said William S. Taylor, or John Marshall, or any citizen of Kentucky of the benefit of a republican form of government, as guaranteed by the Constitution of the United States.

(3). It erred in holding that neither the Constitution of Kentucky nor its Statute governing elections, as made and enforced by the State of Kentucky, abridged the privileges or immunities of either said Taylor or Marshall or any citizen of Kentucky as a citizen of the United States, as forbidden by the Constitution of the United States.

(4). It erred in holding that the General Assembly had jurisdiction to declare said Goebel and Beckham to have been respectively elected Governor and Lieutenant-Governor on the grounds set forth in their notice of contest, and that the resolutions making such declarations were not required to be sent to the Governor for approval, and that said actions by the General Assembly were in all respects lawful and effective, and could not be attacked for fraud, or upon any ground, but were absolutely immune from judicial inquiry.

(5). In holding that the General Assembly or either House or both Houses thereof had determined said contest in favor of said Goebel and Beckham.

Wherefore, plaintiffs in error pray that the judgment aforesaid of said Court of Appeals of Kentucky be reversed, and remanded with directions to order the petition of J. C. W. Beckham to be dismissed.

W. O. Bradley,
W. H. Yost,
Breckinridge & Shelby,
D. W. Fairleigh,
Helm, Bruce & Helm,
Counsel and Attorneys for Plaintiffs in Error.

UNITED STATES OF AMERICA,
DISTRICT OF KENTUCKY,
SIXTH JUDICIAL DISTRICT, } ss.

To J. C. W. BECKHAM, GREETING:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the seventh day of May, next, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein William S. Taylor and John Marshall, for themselves, and claiming by their pleadings to represent the people of Kentucky, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, this seventh day of April, in the year of our Lord, one thousand nine hundred, and of the Independence of the United States of America, the one hundred and twenty-fourth.

James H. Hazelrigg,
Chief Justice Court of Appeals of Ky.

Service of citation accepted April 7, 1900.

Will S. Pryor,
Att'y for def'ts in error.

COMMONWEALTH OF KENTUCKY.

I, Samuel J. Shackelford, Clerk of the Kentucky Court of Appeals certify that this volume and volumes 2, 3, and 4, all attested by my signature, together contain a true, full, and complete transcript of the record and proceedings had in the said Court of Appeals in the case of W. S. Taylor and John Marshall, Appellants, vs. J. C. W. Beckham, appellee, on appeal from the Jefferson Circuit Court, Common Pleas Division, as the same appears of record and on file in my office, together with the original writ of error and citation and copies of the bond and assignment of errors. Volumes 2, 3, and 4 above mentioned contain the exhibits referred to in the answer of Taylor and Marshall, to wit, the counter notice of contest and the evidence heard before the Boards of Contest, which exhibits are bound and printed in separate volumes on account of their great bulk.

In Testimony Whereof I have hereunto set my hand and affixed the seal of my office.

Done at Frankfort, Kentucky, this 14th day of April, 1900.

SAMUEL J. SHACKELFORD, Clerk,
By ROBERT L. GREEN, Deputy Clerk.

TRANSCRIPT OF RECORD.

Vol. 2.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

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WILLIAM S. TAYLOR AND JOHN MARSHALL, PLAINTIFFS IN ERROR.

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 16, 1900.

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A

General Assembly of the Commonwealth of Kentucky.

WILLIAM GOEBEL, ... *Contestant,*

vs.

WILLIAM S. TAYLOR, ... *Contestee.*

COUNTER NOTICE.

The contestant is hereby notified that the contestee will rely upon the following grounds for the purpose of showing that the vote as returned in favor of the contestant is false and fraudulent, and that contestant did not in reality receive any more, if as many, as 166,000 votes in the State of Kentucky; and that at least 25,000 persons voted for contestee whose votes were counted for the contestant, the ballots being destroyed; besides at least 25,000 voters were prevented from voting for contestee by reason of fraud, force, intimidation, and intentional delay in taking the vote.

1. The contestant controlled the State Board of Election Commissioners in the appointment of all County Election Commissioners, and controlled the latter Commissioners in the appointment of election officers. The result of this was that the entire election machinery of the State was placed in the hands of the contestant, and the vote in many localities counted to suit his partisan officials rather than as it was actually cast; that on this account many thousands of persons who were legal and competent voters were refused the privilege of voting, the contestant having the sheriff, who casts the deciding vote in every controversy, on his side.

2. The contestant, together with the chairman of the democratic State Central and Executive Committees and others entered into a combination with the Western Union Telegraph Company, Richard Croker, of New York, and Jno. R. McLean, of Ohio, the Standard Oil Company, the saloon-keepers, proprietors of pool-rooms, breweries in and out of Kentucky, many democratic officials in the State, including the penitentiaries, including the guards, and city, county and district officials and others, to debauch and corrupt the voters of the State, and for this purpose said persons and corporations contributed large sums of money with which many voters were bought to remain, and did remain, away from the polls; many voters were bribed to vote and did vote for said Goebel; many voters were employed to mutilate or mark, and did mutilate or mark, their ballots, cast for the contestee in such manner that they were thrown out and not counted; many election officers were bribed to commit, and did commit, frauds in the counting of and destroying the ballots to escape detection; and committed frauds in the certifying and counting of the vote. That with said money thus corruptly raised newspapers were subsidized to publish the most outrageous falsehoods and to cover up the fraud and corruption so committed.

3. Policemen, firemen and other city officials, thugs and bullies were used in various localities to intimidate voters and election officers on the day of election, and in this way drove from the polls many who had assembled, and prevented many others, from going to the voting places to vote.

4. Ballot boxes were stolen in some localities, and no elections held in others,—in short the frauds and outrages committed are too numerous to be mentioned in this paper.

5. In Precinct No. 7 of McLean County G. W. Hickman, the democratic candidate for representative, was illegally in the voting place with election officers when the count was being made, and his brother-in-law, Leslie Johnson, who was

not a resident of said precinct, was inside the voting place at the same time, acting as democratic inspector, by reason of which the vote cast for this contestee was not fairly or legally counted, the extent of the fraud being unknown to this contestee; he therefore asks that the vote in this precinct be excluded.

6. That in North Uniontown Precinct of Union County persons not officers of the election were permitted in the voting place and around the booths until twelve o'clock of that day, and threatened to throw the republican clerk out of the voting place, in consequence of which he was forced to agree that the democratic challenger, who was improperly in the voting place, should fill out a number (which he did) of the ballots for voters and affix the clerk's signature to same, and in this precinct the ballot box was left in the sole possession of the democratic challenger, who had no legal authority whatever to such possession, by reason of all which intimidation and improper conduct republicans were prevented from voting and left the polls—the number not known to this contestee, for which reason he asks that the vote in this precinct be excluded.

That in Sturgis Precinct in said county the ballots were deposited in a cigar box during a portion of the day, which box was not locked at any time, for reason of which he asks that the vote in this precinct be excluded.

7. That in Christian County one Charles Meacham, a member of the Democratic State Central Committee, was appointed one of the Election Commissioners for the said county. The entire list of republican officers suggested by the republican commissioner was rejected with the exception of five officers for the northern portion of the county, in which portion of the county no frauds were attempted to be practiced. In the appointment of officers of election in the city of Hopkinsville, and the south portion of the county where there were a large number of negro republican

voters, the said Election Commissioners refused to appoint any officers of election for the republicans except negroes, and in doing this appointed only such negroes as were illiterate and totally unqualified to perform the duties of the office. These appointments were made over the protest of the republican Commissioner, and for the purpose of enabling the contestant to obtain an unfair advantage and to practice fraud with impunity.

The following negro election officers were appointed, as stated, who could neither read nor write: Bowling Jessup, Jim Robinson, Ike Baker, John Hayes, Maxey Lucas, William Humphries, Will Richardson, Antony Ware, Scip Tandy, Joe Berry, Dick Hightower, George Mills, Tom Gee, Joe White and Dow Hopper; another, George Gray, was appointed, who is said to be able to read, but not write. In precincts Nos. 8, 9, 11, 12, 13, 15, 16, 18, 19 and 20, in said Christian county, the ink pads used in the voting booths were flooded with ink by democratic election officers so that it was well nigh impossible to stamp the ballot without blurring it, or leaving some print by reason of which the ink could be seen from the back of any ballot, however thick the paper. The democratic election officers used various methods in folding the ballot to press in such a way as to leave the stencil mark upon some other part of the ballot when it was opened.

When folded in the middle the prohibition device fitted exactly over the republican device, and when the voter voted the republican ticket with the stencil the democratic officers in receiving it folded and pressed it in such a way as to leave the stencil mark, or blur, under the prohibition device as well; and all ballots which were marked by reason of the folding, or by reason of the flooded stencil, were voted for this contestee, and were thrown out in the county, by reason of which this contestee lost 434 votes cast for him in said county. In precinct No. 12, A. F. Stanley, appointed

inspector by the Republican County Executive Committee of Christian county, was refused admission to the polls, and the republicans had no representative at the count in this precinct, by reason of which this contestee was robbed of sixty-five votes which had been cast for him, and to which he was entitled and is now entitled to have counted for him. That 100 votes were thrown out in the count where the stencil was made under the republican device, but outside the square and where the wrong end of the stencil had been used in stamping the ballot, or the rubber thereon had been cut off by some democratic official.

These irregularities occurred in No. 16, and in nearly every precinct south of Hopkinsville. Some of these ballots were returned to the county clerk without any certificate; most of them, however, were destroyed, when it was the duty of the officers of election to have preserved them; that the County Board of Election Commissioners, sitting as a canvassing board without any legal authority, refused to count and certify the vote cast at Hopkinsville Precinct No. 1, although same was correctly certified, and nothing whatever appeared upon this certificate to show any alleged irregularities in the conduct of the election, or any ground whatever to impeach the returns, or to avoid the election. In this precinct 409 legal votes were cast, 252 of whom voted for this contestee and 157 of whom voted for the contestant, making a net loss to this contestee of 95 votes. He claims that the 694 votes lost to him as aforesaid should now be counted for him.

8. That in the county of Jessamine, Precinct No. 1, East Nicholasville, there were registered 260 negro votes, all of whom were republicans, 60 democrats were registered in the same precinct, 20 of whom voted for this contestee. In that precinct only 205 persons were allowed to vote. In this precinct the Democratic County Commissioners over the protest of the republican commissioner appointed as clerk a

republican who was not qualified, and who was barely able to write his name. They were notified of this fact, but persisted in retaining him, the object of which was to prevent a full republican vote from being taken in that precinct. The republican Commissioner named Thomas Burrows for clerk who was perfectly competent and qualified in every respect, but they refused to appoint him ; and on the day of the election, notwithstanding there were several qualified republicans present, the said incompetent clerk not being able to act, his place was filled by a democrat, one R. M. Hunter, and who was a brother of one of the candidates to be voted for at said precinct, over the objection and protest of the republicans.

This left three democratic officers in the precinct. On account of the delay systematically indulged in by these democratic officers the following named persons were present, and who were citizens of the United States, had lived in the State more than twelve months, in the county more than six months, and in the precinct more than sixty days before the election, and without any legal disqualification were refused the right to vote, would have voted for this contestee, to-wit: Andy West, Henry Clay, James Lilly, Ernest Morgan, Alex Gibbs, Alex Spillman, Richard Orford, John Washington, Henry Baker, James McInhan, Sam Williams, Henry Million, Will Taylor, Brown Seals, Jake Lewis, William Brown, Rob't Dennis, Will Robinson, Chas. Thompson, Merriman Walker, Robert Hullett, Smith Jackson, Chas. Brown, Daniel Braxton, Harry Farris, Peter Sanders, Milford Fry, Dave Speaker, Geo. Maxberry, Ed. Dry, Andrew Carpenter, James Campbell, Morton Hopewell, Tom Scott, Geo. Walker, Henry Hawkins, Chas. Baker, Will Betts, Smith Griffen, Pleas Taylor, Henry Hawkins, Louis Lawson, Geo. Mason, Tom Miller, Morton Carroll, Robert Embry, Geo West, Absolum Jeffreys, Phlem Butler, Elliott West, Ed. Ballard, Tom Hawkins, More Cannady, Henry Davis, Edward Sampson, Ed. Johnson, Will Rease, Jus Gordon, Jake Overstreet, Ned

Washington, Willis Mason, Frank Epps, Chas. Carter, Will Trimble, Strather Coleman, Henry Moore, Jerry Brodus, Nayman Hightower, Buford Dunn, Wyatt Smith, Sam Bradshaw, Jas. Quincy, Ed. Smalley, Jim Davis, John Broadus, John Kennedy, Alex. Carter, Tom Baker, Frank Ballard, Phil Walker, Henry Weaver, Henry Reed, Carey Cooley, Simon Bowman, Pleas Campbell, Chas. Ellis, Ed. Miller, Jno. A. Lewis, Geo. Bowman, Mort Pryor, Burrows Campton, Tom Carter, Geo. Faron, Horace Williams, West Meyers, Jas. Totten, Henry Demis, Will Chrisman, Chas. Bell, Richards Shanks, Billy McQuerry, James Simpson.

When the polls closed at four o'clock the democratic officers refused to count the vote, and the ballot box was thereupon taken by them to the clerk's office where it remained for three days before the vote was counted; and when the vote was counted no republican inspector, or any other republican, was admitted to witness the count. When said count was made it was fraudulently made, so as to make it appear that this contestee had received only six majority or plurality, when if said voted had been fairly counted and the persons present qualified to vote allowed to vote, this contestee would have received 240 majority over the contestant and which should now be counted for contestee.

9. That in the Fourth ward of Cynthiana in Harrison County this contestee received a majority over contestant of 133 votes; and the Election Commissioners refused to count this vote and excluded said poll from the count of the county illegally and without any proper reason therefor, thus depriving this contestee of 133 majority in this said precinct, which he asks should now be counted for him.

10. That in Bracken County, Foster Precinct, the election officers assembled on the morning of November 7th, 1899, and not being able to find any one authorized to administer an oath, did not open the polls until 10 o'clock A. M., when a Justice of the Peace appeared, who was competent to admin-

ister the oath, but refused to swear in L. B. Plummer and William Markley. This caused great confusion, quarrels and general personal difficulties, resulting in the selection of two democrats in the places of the said Plummer and Markley, so that the republicans were deprived of having any officer at said election, by reason of which this contestee was fraudulently cheated out of seventy-five votes, which were voted for him, but not counted for him; he asks that said seventy-five votes be counted for him in the event said precinct is not excluded, which he insists should be done.

11. That at Middlesboro, in Bell County, the election was conducted in the most outrageously, fraudulent and illegal manner, by reason of which this contestee lost at least 150 votes. Ballots were mutilated by republican voters, who were bribed by contestant's friends, so they could not be counted legally, which were voted for this contestee. Voters were bribed to vote against contestee, to leave Kentucky and go into the State of Virginia and refrain from voting; and wholesale intimidation was practiced, by reason of which many who came to the polls to vote for this contestee were driven away. He was entitled under the registration, and in fact to 240 majority, and in fact only carried it by sixty majority over contestant, and he now asks that 180 more votes be counted for him in that city.

12. That in Trimble County the Democratic County Election Commissioners, T. S. Wright and C. A. Bell, acted as such without any appointment from the State Board of Election Commissioners, for which reason he asks that the entire vote of the county be excluded.

13. That in Kenton County, the home of contestant, the County Board of Election Commissioners, acting in collusion with the contestant and under his order, caused it to be, and it was publicly circulated among the democratic officers of the election that no republican inspectors should be admitted to any polling place for the purpose of assisting

in or witnessing the count; and such inspectors, although appointed by the Republican County Executive Committee, were either not admitted or excluded from the polling places after admission or thrown out by the election officers, or by partisan police and city firemen, acting in collusion with contestant. The said County Election Commissioners, Elliston and Kakenge, were partisan friends of contestant, and appointed all election officers who were the friends and partisans of contestant, and of the democratic ticket. Republicans were almost universally excluded from serving as election officers throughout the county of Kenton. The county clerk of Kenton County, who was a partisan friend of, and acting in collusion with contestant, and a democrat, refused to permit the republican ticket nominated by the republican party of the city of Covington at a convention called by order of the Republican Executive Committee of the city, and held under its orders and directions, to be placed on the ballots under the republican emblem, to-wit: the log cabin. This ticket was regularly certified to by the chairman and secretary of the republican convention at which it was nominated; and by the chairman of the Republican County and Executive Committee of Kenton county and city of Covington; and the chairman of the Republican State Central Committee.

Notwithstanding these facts the said county clerk unlawfully placed the regular republican city ticket at the extreme right hand lower corner of the ballot under no State ticket, and placed the picture of a locomotive as its emblem over said ticket, and denominated it as the republican fusion ticket. By these means many hundreds of republicans were deprived of voting the republican State and city ticket, inasmuch as it threw them into confusion and rendered it necessary in voting both tickets to place the stamp or stencil under the emblem of either one or the other of said tickets, but not both, and to mark opposite the names of the individual

candidates voted for on the other ticket. In this way it became necessary to make not less than ten cross marks in voting the straight republican ticket. Not only so, the said county clerk placed under the regular republican State ticket and under its emblem a ticket nominated by certain persons claiming to be republicans, but who were in sympathy with contestant, said persons having no party committee or organization whatever. City police officers were stationed at, in and about every voting precinct in the city of Covington, and in many precincts they interferred with the election and usurped the duties of the officers of election by entering the voting places and pretending to pass upon the credentials of challengers of election, and in many precincts forcibly ejected from the voting places republican inspectors after the polls closed at four o'clock.

At about 7:30 o'clock P. M. on the day of the election, an order of the Kenton Circuit Court was entered, directing all election officers to admit inspectors appointed by the Republican County Executive Committee, headed by R. P. Ernst, chairman. When these inspectors were finally admitted into the polling places, with but few exceptions it was found that the ballots had been destroyed, and certificates of the result of the so-called count made out and signed. In several precincts upon their admission the count had been partly completed, and in these the officers had burned or destroyed the ballots as counted, contrary to law; for the reason aforesaid, contestee asks that the entire vote of Kenton county be excluded. In Precinct E of the Second ward the chief of the Covington fire department, a violent partisan of contestant, acting in corrupt collusion with contestant, was in the voting place the greater part of the day without right. All the election officers in this precinct were democrats, and the said chief, with two officers, forcibly ejected from the polling place the republican inspector, duly appointed by the County Executive Republican Committee,

and there was no representative of the republicans present at the time of the count.

In this precinct, according to the certificate, every candidate on the democratic ticket except one for city clerk, who had no opposition, received the same number of votes, to-wit, 325; while the republican candidates were given from forty to fifty votes each. When the republican inspector was admitted into this precinct by order of Court, at 7:30 P. M., the ballots had been all destroyed. The fact is that more than one hundred persons who voted for George H. Davidson, the republican candidate for mayor, have sworn that they so voted, nothwithstanding the certificate of the officers of election gave him only forty votes, and all of said persons likewise voted for this contestee. The republican member of the County Election Commissioners presented to his two democratic associates a list of names of persons theretofore appointed by them to serve as republican election officers, who were not republicans or who were incompetent, aged, infirm, unable to read or write, or of bad character, but the said democratic Commissioners refused to remove any of them, or to take any action upon the same. The said democratic members of the Board of Election Commissioners appointed as republican officers of election persons known to be in sympathy with the democratic ticket, or so aged, infirm or ignorant as to be utterly incompetent for any purpose, or so corrupt as to be totally unfit to serve. Contestee asks that for these reasons the entire vote of Kenton county be excluded.

In the First ward, Precinct E in the city of Covington, on the morning of the election aforesaid, Frank Noonan, republican challenger, was forcibly ejected from the polling place by the sheriff of the election, Green McCoy, and Police Officer Davis. At the close of the polls the door of the voting place was closed and locked by the election officers, assisted by said Davis, and B. T. Wisenall, duly appointed inspector

by the Republican County Executive Committee, was refused admission to the polling place. Later in the evening after Judge Tarvin had issued an order requiring the election officers to admit republican inspectors, said Wisenall was permitted to enter the voting place, but ascertained upon his entering that three-fourths of the ballots had been counted and tallied, and destroyed. This precinct is ordinarily republican by a good majority, notwithstanding which fact the returns at the last election gave contestee only forty-eight votes and contestant 107 votes. The contestee alleges that he actually received at said precinct no less than 100 majority over contestant, and that the ballot was fraudulently counted and manipulated so as to produce the certified result; contestee asks that the vote in this precinct be excluded, and if not done that he be given twenty-five majority over contestant.

In the First ward, in Precinct F, at the close of the polls, Fred Schmitz, republican inspector, entered the voting place, but was ordered out by the election officers and forcibly ejected by Police Officer Mike Leonard. Later in the evening and immediately following Judge Tarvin's order, made about 7:30 P. M., Policeman Leonard came to the door of the voting place and ordered the election officers to "burn the ballots." About a half hour after this the republican inspector was admitted under said order, and when he entered he found that more than half of the ballots had been destroyed, but the count not completed, all of which was illegal and improper, by reason of which the contestee was defrauded out of at least fifty votes, which he contends should be counted for him in the event that the precinct be allowed to be counted, which he resists.

In Precinct G, First ward, the republican inspector appointed as aforesaid demanded admission, but was refused by the sheriff of the election and Police Officer James Cody, and the ballots were so manipulated as to lose to this con-

testee at least fifty votes, which he asks may now be counted for him in the event the precinct is counted, which he resists.

In Precinct C, Second ward, the republican inspector appointed as aforesaid, Thomas J. Wilson, was refused permission to remain in the voting place and forcibly ejected therefrom by Lieutenant of Police Schweinefuss, Police Officer James Hughes, Joseph "Snuff" Meyers, chief of the fire department, and William Carrick, sheriff of election. The said Meyers was, without right or authority, in the voting place frequently during the day, directing and ordering the officers of election in the performance of their duties. Later, following Judge Tarvin's said order, Joseph W. Pugh, chief of the police department of Covington, acting in collusion with contestant, came to this voting place and was permitted to enter, and shortly thereafter the ballots were burned. Persons who looked through crevices in the building saw the said Meyers handling the ballots to the exclusion of the election officers, and apparently directing the entire proceedings and counting of the votes.

At 7:45 in the evening the republican inspector was permitted for the first time to enter the voting place, and found all the ballots destroyed. In this precinct the certificate showed 325 straight democratic ballots, except as to one candidate for city clerk, who was the only candidate on the entire ballot without opposition; and yet it was certified that he received 100 votes less than the other democratic candidates. By reason of the frauds, etc., committed in this precinct the contestee was robbed of 100 votes, which were in fact cast for him, he asks that said precinct be excluded, or if counted said 100 votes be counted for him.

In Precinct D, Second ward, Charles Sendecker, duly appointed republican inspector, as aforesaid, entered the polling place to vote a short while preceding the closing of the polls. When the polls closed he was ordered out of the

room, and compelled to leave it. When he returned at 7:45 P. M., after Judge Tarvin's decision, although the count had not been completed, all the regular ballots had been destroyed, except ballots for school board, which were being counted. He was ejected from the polling place at 4 o'clock P. M. by Police Officer Cahill. In this precinct contestee was robbed of seventy-five votes, which were in fact cast for him, and which he now asks should be counted for him.

In Precinct E, Second ward, Geo. L. Morgan, the republican challenger, duly appointed as aforesaid, was forcibly ejected from the polling place by said Schweinefuss, Policeman McNeeve, and Mat McGee, sheriff of the election. In this precinct this contestee was defrauded out of at least fifty votes which were actually cast for him, and which he now asks shall be counted for him.

In Precinct F, Second ward, Hubert Miller, republican challenger, duly appointed as aforesaid, was forcibly ejected from the polling place by Police Officer Thomas Feeney and said Lieut. Schweinefuss, the said police officer entering the polling place wrongfully, without solicitation upon the part of the election officers, notwithstanding the fact that they expressed their willingness to permit said challenger to remain. In this precinct said Feeney attempted to prevent Ed. Gahan from voting; and in this precinct the contestee was deprived and defrauded out of twenty-five votes, which were in reality cast for him, and which he now asks shall be counted for him.

That in Precinct B of the Third ward, Louis Selmier, republican inspector, duly appointed as aforesaid, was forcibly ejected from the polling place by C. Thompson, sheriff of election in said precinct, by reason of which, in the count of the vote, this contestee was fraudulently deprived of fifty votes which were actually cast for him, and which he now asks shall be counted for him.

That in Precinct E of the Third ward, the republican inspector, Ed Koeing, duly appointed, as aforesaid, was refused admission to the voting place, the election officers closing the doors shortly before four o'clock, and refusing to permit said inspector to enter. In this precinct the election officers were composed of members, and those in the voting place and without the same were almost entirely composed of the members of the police and fire departments of the city of Covington and their relatives. Walter Soden, a member of the city fire department, claiming to have been appointed a democratic inspector, but not actually appointed, performed the duties of an election officer. One P. J. Herlien, a brother-in-law of Lieutenant of Police Finnegan, was another one of the election officers. Said Finnegan and Policeman Flavin stood at the door of the voting place and permitted none of the inspectors for any of the parties except the democratic party to enter the same.

In this precinct Mr. Davison, the republican nominee for mayor of the city, was certified to have gotten but six votes, and his opponent, Mr. Johnson, 162 votes. Forty-two persons, voters in this precinct, have made affidavit that they voted, and, in fact, they did vote, for Mr. Davison for mayor. After the decision of Judge Tarvin, Alex. Veach, the republican inspector, entered the polling place, but found all the regular ballots destroyed, the election officer at that time counting the school board ballots; and Election Officer Dooley was so drunk that he could not act in the capacity of an election officer. In that precinct this contestee was defrauded out of seventy-five votes which were actually cast for him, and which he now asks should be counted for him.

In Precinct A, Fourth ward, William G. Brossene, the republican inspector, duly appointed, as aforesaid, was refused admission to the polling place when the polls closed. Subsequently he was admitted, after Judge Tarvin's order, and found upon entering the voting place that the ballots

had been counted, and destroyed. He noticed especially the vote in the mayoralty contest, that 147 ballots had been counted, all of which were mixed tickets, and of these 147 ballots, but ten had been given to Mr. Davison, the republican nominee for mayor. There remained but 173 ballots to be counted. Of these fifty-seven were straight democratic tickets, leaving 116 ballots to be counted. Of these 116, Davison received ninety-two. Contestee was robbed in this precinct of 100 votes, which were actually cast for him, and which he asks shall be counted for him.

In Precinct B, Fourth ward, Orlando Welling, the republican inspector, duly appointed as aforesaid, was forcibly ejected from the polling place by Police Officer Brink, by reason of which the votes were fraudulently manipulated, and this contestee deprived of fifty votes, which were actually cast for him, and which he asks shall be counted for him.

In Precinct C of the Fourth ward, during the count, Jos. L. Rhinock, mayor of the city, together with Policeman George Davis, both acting in collusion with contestant, drove up to the polling place in a buggy, and said Rhinock ordered Policeman Jansen and said Davis to break into the polling place and eject the republican inspector, Ed. Zeisz therefrom, which was promptly done. By reason of which the vote was fraudulently manipulated, and this contestee defrauded out of 100 votes which were actually cast for him, which he now asks shall be counted for him.

In Precinct E, of the Fourth ward, the republican inspector, Ben Gier, appointed as aforesaid, entered the polling places at 4:00 o'clock, but was forcibly ejected by the sheriff of the election and the democratic inspector, John Schlorman, who was also a member of the police, and Fireman Lemker drove up to the polling place and called Schlorman and handed him a bundle resembling in size the official ballots used on election day, and which contestee charges were ballots. After Judge Tarvin's decision and before the arrival of

the deputy sheriff, Jos. W. Pugh, chief of the police of the city of Covington, drove up to the polling place and attempted to enter, but was prevented from doing so by the protests of bystanders. When the republican inspector was put back into the polling place, the election officers immediately tore up the tally-sheet which they had been using, and it was necessary to use a new tally-sheet to complete the count of the vote; by reason of all which this contestee was defrauded out of 100 votes actually cast for him, which he now asks should be counted for him.

In Precinct B, of the Fifth ward, the republican inspector, Charles J. Davis, who was appointed as aforesaid, was forcibly ejected from the polling place by the sheriff of the election and Police Officer Schmeing, by reason of which frauds were perpetrated in the count, resulting in defrauding the contestee out of seventy-five votes, which had been actually cast for him, which he now asks should be counted for him.

In Precinct F, Sixth ward, the republican inspector, L. B. Anderson, duly appointed as aforesaid, was forcibly ejected from the polling place by the democratic inspector, and Police Officer Ed. Koeing and Ed. Richmeyer, by reason of which frauds were committed, resulting in depriving this contestee of fifty votes, which were actually cast for him, which he now asks should be counted for him.

On the morning of the day of the election, November 7, 1899, said lieutenant of police, B. Schweinefuss, in collusion with contestant, drove around to the various voting places of the city of Covington, and instructed the police and election officers to refuse to admit inspectors for the republican party. Police officers were present at or about the various polling places in the city of Covington during the entire day, and paid no regard to the observance of the rule requiring that all persons should be kept within not less than fifty feet of the polling places; and police officers in the various precincts entered the polling places from time to time during the day, in some instances remaining inside during the day.

In a number of precincts in said city persons were admitted as inspectors who had credentials signed by one George Glendon. Said Glendon held no official position in the organization of any political party in Kenton county, and was not chairman of the executive committee of any party in said county. The persons so admitted were as follows: In Precinct A of the First ward, George Stevenson. Said Stevenson was interested in the gambling institutions of the city of Covington, an ardent supporter of the democratic organization in the county of Kenton, and instrumental in the organization of the "rump" convention which nominated the so-called "Nadaud" ticket, a bolting republican ticket nominated for the purpose of defeating the regular republican ticket and being in corrupt collusion with contestant.

2. In Precinct F of the First ward, John Reeves. The said Reeves was instrumental in the nomination of the said Nadaud ticket, and openly stated that he voted and worked for the success of the local democratic ticket.

3. In Precinct C of the Second ward, Andy Och, who was an open and avowed supporter of contestant and the democratic ticket.

4. In Precinct C of the Fourth ward, George Thobe, who was instrumental in the organization of said Nadaud conspiracy, and was its nominee for the Legislature from the Third Legislative District of the county of Kenton, against the regular republican nominee.

5. In Precinct —— of Sixth ward, one Charles W. Woods. The said Woods is an employee of the pool rooms of the city of Covington and was a supporter of the democratic organization.

In very many voting places in the city of Covington the only inspector admitted to witness the count was the democratic inspector, and these inspectors were composed largely of members of the said fire department, acting in collusion with contestant.

That the Election Commissioners of Kenton county did not test any of the election officers appointed by them as to their qualifications.

In Precinct A of the First ward the returns show that Johnson, the democratic candidate for mayor, received 110 votes, and Davison, the nominee of the republicans, thirty-five votes. Sixty-two persons, voters in this precinct, have made affidavits that they voted, and they did vote for said Davison; besides, many others so voted. In Precinct C of the Second ward seventy-two persons have made affidavits that they voted and they did vote for Davison (all of whom voted for contestee), and eight others have stated that they voted for him, but did not make affidavit, and all of these persons voted for contestee; and yet the returns in this precinct give Mr. Johnson 325 votes and Davison forty votes.

In Precinct E of the Third ward, forty-two persons have made affidavit that they voted, and they did vote for Davison, and also voted for contestee, whereas the returns show that Mr. Davison received only six votes. In all of these precincts the same rate of fraud was practiced upon this contestee. In Precinct F of the Fifth ward and Third ward in the city of Covington, the blank form in the back of the stub book was not filled out, and there was no official returns received by the Board of Election Commissioners, acting as a canvassing board. When the vote was being counted, this precinct was passed, but subsequently on the same evening some person presented himself who claimed that he was an election officer at that precinct. No proof was taken as to whether or not he was an officer of the election, and the Election Commissioners received from him a statement of the vote cast in this precinct, and ordered such statement of the returns to be filed and made the official returns from this precinct. The vote so certified was twenty-four votes for this contestee and 102 votes for contestant; when in truth and in fact this contestee was by said certificate defrauded out of at

least seventy-five votes, and which he now asks may be counted for him.

In Precinct B of central Covington, the following named persons were prevented from voting because the county clerk failed to supply a sufficient number of ballots, all of whom would have voted for contestee, to-wit: Frank B. Thomas, 47 Willow St.; Ben Boring, Howard St.; James Hensley, 40 Holman St.; Geo. Wessels, 15 Holman St.; Geo. Wehebrink, 67 Willow St.; Jos. Wehebrink, 67 Willow St.; Henry Ferring, Howard St.; Ben. F. Tupman, Highland Pike; Henry Otte, Highland Pike; John Kersey, Willow St.; Patrick Donnelly, 35 Russell St.; A. Irvine, Pleasant St.; Chas. Swegles, Jackson St.; Wm. Mullins, 98 Franklin St.; James Malloly, James Todd, and also a large number of Catholic brothers whose names can not be gotten within the short time allowed.

In Precinct C, of the Second ward, some of the persons who voted for said Davison and contestee, and whose ballots were abstracted, or not counted, or counted for Johnson and Goebel, are J. J. Ceisen, 617 Madison Ave.; J. Bodde, 25 Athey Ave.; Frank Knoll, 12 Athey Ave.; William Binter, 10 Athey Ave.; Geo. Binter, 10 Athey Ave.; William Schomaker, 14 Athey Ave.; Bernard Brand, 27 Athey Ave.; Harry Kohorst, 29 Athey Ave.; Phil Brandner, 26 Athey Ave.; Henry Highfill, 30 Athey Ave.; Ed Scott, N. E. Cor. Craig and Athey Ave.; Pete Coyne, N. E. Cor. Craig and Athey Ave.; Jacob Fansz, 115 W. 5th St.; Chas. R. McCourt, 12 Kentucky Ave.; John J. Luken, 122 W. Sixth; H. B. Wenstrup, 103 W. Sixth; H. Burmankamp, 102 W. 6th; Chas. Allen, 111 W. 6th; J. Koop, 114 W. 6th; Roy Mason, 8 Athey Ave.; Robt. H. Wubbolding, 15 Athey Ave.; B. Volker, 620 Russell St.; J. E. Day, 19 Athey Ave.; John Bitzer 610 Craig St.; Phil Bitzer, 610 Craig St.: Henry Buckshorn, 538 Craig; Jacob Fansz, Jr., 115 W. 6th; H. Bonhorn, 730 Craig St.; Geo. Prues, 518 Craig St.; B.

Prues, 518 Craig St.; Ben. Reverman, 516 Craig; Gus Hengehold, 525 Russell Ave.; G. W. Hengehold, 525 Russell Ave.; G. B. Wubbolding, 82 W. Sixth; F. T. Montgomery, 34 W. Sixth; Henry Griese, 42 W. Sixth; William Leslie, 32 W. Sixth; A. Scheper, 602 Washington St.; Thos. Reed, 520 Russell Ave.; John B. Miller, 44 W. Sixth; Frank Eilers, 46 W. Sixth, William H. Harrison, 99 W. Sixth; William J. Siebert, 99 W. Sixth; Geo. W. Keeney, 299 W. Sixth; Harry H. Buckshaw, 538 Craig; John Schmidtz, 714 Craig; Sid Rufra, 720 Craig; A. Meier, 722 Craig; Feeny Willenbomk, 714 W. Sixth; Jacob T. Freidkof, 427 W. Sixth; Ben Johnson 732 W. Sixth; Hinrick Nordhoff, 806 Craig St.; John Leidhegener, 718 Craig; John Struewing, 7 Harvey; Mel Price, Hartford Flats; Charles Taylor, Hartford Flats, J. A. Gottschalk, 70 Pike St.; Theo. Crane, 29 W. Sixth; J. S. Simcox, 14 W. Sixth; Henry Sellmeyer, 2 Athey Ave.; T. Burns, 25 Athey Ave.; Jacob Stephens, 17 Athey Ave.; Theo. Huelsmann, 714 Craig; Jos. Repling, 26 Athey Ave.; Chas. D. Fansz, 115 W. Fifth; Alfred C. Weatres, 728 Craig; J. S. Bobbitt, 4 Athey Ave.; John Terwort, 4 Harvey; Joe Retting, 522 Craig; P. E. Stockwell, 530 Craig; Henry Ricke, 5 Kentucky Ave.; B. Prues, 518 Craig; August Meyer, 71 Kentucky Ave.; Ernst Yager, 117 W. Sixth; William G. Henegehold, 525 Russell; Joseph Bloomer, 13 Athey Ave.; A. Overman, 42 W. Sixth; Alfred R. Clark, 68 W. Sixth; J. P. Oliver, 19 W. Sixth; Henry Fibbe, 519 Russell; Anthony Gerrin, Central Hotel.

In Precinct A of First ward, M. Stewart Hasting, Thomas W. Willis, William Wheeler, Jeff Delaney, Anderson C. Ward, Geo. Fisher, Roland Emroy, Richard Hughes, Charles Crumley, Lyttle J. Hunter, Thomas W. Turner.

In Precinct A, of the First ward, J. I. Blackburn, John A. Simpson, Chas. W. Lakin, T. C. Westfall, S. W. Holland, Paul Wisenall, B. T. Wisenall, F. M. Newton, Jr., H. F. Williams, Frank H. Perkins, William Spear, Jos. J. Noonan,

Frank E. Noonan, P. N. Hardeman, Jas. Clayton, William R. Weaver, Weeden O'Neill, J. H. Russell, J. F. Williams, Jacob D. Driesner, A. J. Laird, Bradford S. Williams, H. L. Lovell, A. Clifford Shinkle, Frank Williams, H. S. Rogers, W. H. Tulloh, E. M. Sellers, W. B. Sellers, Bradford Shinkle, John M. Ryan, F. A. Rothier, P. R. Weidman, Charles Ryan, F. A. Laidley, W. J. Ryan, W. M. Lyon, John Reed, Thomas Gassler, Jos. B. Fenley, W. M. Fenley, J. E. Tulloh, J. K. Rowlette, Lewis Hamilton, Geo. Collins.

In Precinct E, Third ward, Jas. H. Gahan, Al E. Beach, Phil Ernst, Simon Ernst, William Johnston, Frank Johnston, Henry W. Ranshaw, Albert W. Pitts, Christ C. Schlanker, John L. Keesy, E. Ryan, Thomas J. Kite, Geo. Spellbrink, H. Fliesner, J. Fliesner, Alex Mochre, William Parton, J. E. Stevenson, Charles Stevenson, Edgar Stevenson, H. G. Stevenson, David H. Ranshaw, Jos. Karlen, Irvine Kite, Geo. W. White, Theodore Kunpfer, J. L. Somler, Jas. Harber, Jos. Amia, Geo. Stein W. H. McClung, Wm. Kiger, J. F McCormack, Geo. P. Huston, Henry Flessner, Fred Friend, Jas. Arnold, O. B. Hester, James Hester, Richard Gahan, Emil Carl, Geo. Holmes, Fred Lubers, Peter Karlen, B. Exterkamp.

That Joseph L. Elliston who was chairman and secretary of the Election Commissioners for Kenton county, was and is a man of bad character, and so held in Covington, and in Mt. Sterling, the place from which he came, and left the latter place on account of his bad standing therein. Two democratic primaries have been held since Elliston became chairman of the Democratic Executive Committee of Kenton county, both of which have been fraudulent, and both of which he manipulated.

That there were no republican inspectors in the following precincts in the city of Covington: Precinct G, First ward, Precinct D, Second ward, Precinct E, Third ward, Precinct D, Fourth ward, Precinct D, Fifth ward, Precinct F, Sixth

ward, and Davidson and Milldale precincts in Kenton county. The following republican officers of election, who are men of notoriously bad character, were appointed by the two democratic members of the County Election Commissioners of Kenton county, over the protest of the republican member of said board, as republican officers of election in the city of Covington, many of whom were employes of the pool rooms and gambling institutions of the city of Covington, to-wit: E. W. Eairheart, Ed. F. Sprague, William Carrick, Maurice Williams, Bud Marsh, Joseph Bath, Geo. Copeland.

The following officers were appointed to act for the republicans in the country precincts, who are men of notoriously bad character, and who were objected to by the republican member of said board: R. A. Powers and R. Durr, in Stevenson; and Hud Bryson, in Davidson precinct.

The following officers of like bad character were appointed to serve for the democrats in the city of Covington: John Thompson, Thomas Cameron, Harry McBreen, under indictment for felony; William Carroll, Charles Todenbier, Michael Flannigan, Charles Mohr, Charles Eggleston, and in West Covington, Charles Kelp, of like bad character.

The following persons were appointed as republican officers of the election in the city of Covington against the protest of the republican Commissioner, who were registered democrats: Thomas Edwards, James Toner, Joseph Bath.

The following persons served as election officers in the city of Covington in the interest of contestant and the democratic ticket, without appointment: J. J. Reddick, Walter Soden, a member of the city fire department, and Thomas Cody.

Green McCoy, appointed republican sheriff, was utterly incompetent by reason of want of education and intelligence, and did not live within the precinct for sixty days immediately preceding the election. For these reasons he was

objected to by the republican Commissioner. George Glendon, appointed as republican judge, was not a republican, but was a member of the so-called Nadaud bolting ticket, which was in controversy with the contestant and the democratic party.

The following election officers were appointed in the city of Covington as republicans who were in favor of the election of contestant and sympathizers and supporters of contestant: E. W. Eairheart, Bud Marsh, J. D. Young, George Glendon. In Davidson precinct Hud Bryson, aforesaid, was open and notorious in favor of the success of the democratic ticket. Thomas Dooley, appointed democratic clerk of the election in Covington, was so drunk on the day of the election that he was unable to fulfill the duties of his office.

In the following precincts (city of Covington), there were three democratic officers of election and only one republican: Precincts D and E of the First ward; Precinct D, Second ward; Precinct E, Third ward; Precinct C, Fourth ward. In Precinct C, Sixth ward, all of the officers of election were democrats. By reason of these partisan appointments the frauds which were committed were made easy, all of which operated to the great injury of this contestee.

In nearly every precinct in Kenton county the republican challengers were not allowed to remain, and the republican State ticket was denied and refused representation by inspectors or otherwise at the counting of the votes.

The Board of Election Commissioners failed to keep a record of its proceedings, and of the changes in the election officers, as required by law, but made changes at various precincts the day before the election without notice and without requests.

14. In Fayette county the two democratic Election Commissioners, immediately upon their appointment, made out a list of officers in the county before meeting with their repub-

lican associate, and refused to adopt any suggestions made by him or to appoint a single officer that he recommended. This was done in the taking of the registration, and from the beginning to the end of the election these two Commissioners conducted themselves in the most outrageous and partisan manner, defying every law of fairness or justice, proving that in their selection the contestant had gotten the very character of men that he wanted. These Commissioners appointed every clerk a democrat in the registration of the city of Lexington, so as give them full and unlimited control, but when the officers of the election were appointed they then gave the democratic party every sheriff in the city, with possibly two exceptions, so that they would have full control of the vote.

Of the thirty-two precincts in the county of Fayette, including the city of Lexington, only four republican sheriffs served, the democrats having the other twenty-eight sheriffs who gave the deciding vote on every contested elector. By reason of these facts the contestee was defrauded out of hundreds of votes. The following officers were appointed officers of registration and election who were not householders: P. J. McNamara, John T. Ready, William Longmire, J. B. Sharkey, Garrett D. Welsh, John J. McKenna, John Ryan, Geo. J. Roberts, Faust Foushee and John F. Doyle.

In the following precincts in the city of Lexington, at the registration preceding the November election, 1899, three democrats and one republican served as officers of the election, to-wit: Nos. 16, 17, 22, 25, 26, 28, 30 and 31. At the following precincts in the city of Lexington, all the officers of registration who served in the registration preceding the November election, 1899, were democrats: Nos. 18, 25, 27 and 32.

In the following precints in the county of Fayette, three of the officers of election who served at the last November election, 1899, were democrats, and one republican officer, Nos. 3 and 5.

In the following precincts in the city of Lexington, three democrats and one republican served as officers of election in November, 1899: Nos. 16, 19, 22, 23, 25, 28, 30, 31 and 32. In the following precincts in the said city, on said election day in November, 1899, all of the officers were democrats: Nos. 17 and 27.

In Precinct 10, in Fayette county, the republican clerk, Lon Devers, being a slow pensman, it was agreed by the officers of election that his signature should be waived on the ballots, and the number deposited without his signature to be kept accurately and all should be counted as cast. When the polls closed the democratic judge declined to carry out this agreement, and refused to count the ballots without the signature of the clerk, and the clerk refused to certify the result unless these ballots were counted. Thereupon the democratic judge and sheriff swore in J. H. Skinner and removed the said Devers, and said Skinner certified to the result. In this way forty-three ballots, which were voted for this contestee, were excluded from the count, and he was thus illegally deprived of the same. He asks the same be now counted for him.

The democratic County Commissioners of Fayette county appointed as republican officers of election Michael Yochum, who was practically on his death bed and who died before the election. His place was supplied on the morning of the election with C. D. Huston, a democrat, although qualified republicans were present and offered to serve; William Holmes, Sr., over seventy years of age, and totally unable to perform the duties of an election officer; John Young of like age and physical incapacity, both of whom failing to be present, their places were filled with democrats, although qualified republicans were present and offered to serve.

At Precinct No. 4 in Fayette county the democratic judge and sheriff refused to open the polls or to receive any votes unless the challengers remained outside of the

voting room. This the challengers refused to do and no election was held. This was and is a republican precinct, in which the republicans have not less than 100 majority, which he now asks may be counted for him, and which they would have carried for this contestee by a majority of 100.

At Precinct No. 13, in Fayette county, the ballot box was delivered to the democratic sheriff, but was not produced at the polling place on the day of the election, and was afterward found about six miles from the voting place in a field. There was no election in this precinct. It is a heavy republican precinct, and upon a full vote which would have been taken that day, the voters then and there being present, this contestee would have obtained a majority of 125, which was the usual majority in said precinct, which he now asks may be counted for him.

In Precinct No. 14 forty republican voters, all of whom were citizens of this State and who had resided therein more than twelve months before said November election, in the county of Fayette more than six months and in the precinct aforesaid more than sixty days, and who labored under no legal disabilities, were prevented from voting. They were not even allowed to enter the voting place. All of these persons would have voted for contestee had they not been fraudulently and forcibly prevented from so doing. Contestee is unable to give the names of any of said persons except the following: Rath Martin, Lewis Tilford, Joe Mitchell, Dan Williams, John Shreves, Charles Nichols, William Lewis, Eph Drake, Pompey Lee, John Clayborn, Will Shreves, Charles Payton, Benjamin Young, Jim Young, George Gates, Mike Yates, Will Yates, Mike Banks, Jr., Warfield Green and Logan Coffey; and he now asks that said forty votes be counted for him.

In Precinct No. 15, of Fayette county, twenty-five legal voters possessing the qualifications as stated to have been possessed by the voters in No. 14, all of whom were republicans,

were present and offered to vote for this contestee, but were refused permission to do so; he now asks that these votes be counted for him.

In Precinct No. 16 in the city of Lexington, a large number of voters to-wit, fifty, who were legally qualified to vote, possessing the qualifications which are stated to have been possessed by the voters in Precinct No. 14, and who would have voted for contestee, were prevented from registering by acts perpetrated at the hands of members of contestant's political party, and the improper and illegal refusal of the officers to permit them to register. He now asks that these votes be counted for him. At this precinct George Murphy, republican sheriff, failed to appear, and his place was filled by a democrat, although there were a number of republicans present, well qualified, who offered to serve. Twenty-five legal voters possessing the qualifications described as those in Precinct No. 14, were present and offered to vote for this contestee, who were prevented by intentional and deliberate delay at the hands of the democratic officers in said precinct from voting, which he now asks may be counted for him. In this way contestee was robbed of that number of votes.

The persons who failed to register as aforesaid, and who would have voted for this contestee and whose votes he was illegally deprived of, are as follows: John Adley, Jim Alums, Jas. Agee, Will Adley, Jessie Buzz, Thos. Barryman, Ed. Boughton, Harrison Best, Robt. Beasley, Tom Bradley, Jerome Berry, Jim Clay, Jas. Craig, Rich Dunnehy, Allen Doly, Frank Engleman, Horace Graham, Andrew Harting, Dave Holly, Louis Hocker, John Hanly, Parker Johnson, Al Johnson, Josh Jones, Ben Johnson, Hy Johnson, Robert Kendall, Abner Lewis, Al Lee, J. McGrath, Hy Horton, Jesse Martin, Will Porter, Jessie Price, Amos Pettit, A. B. Phillips, Thos. Page, Dunlay Stevenson, Andy Smith, John Smith, Wesley Simms, Geo. Talbot, Harvey Turner, Ab

Wilkerson, D. Williams, H. Wade, Major Walker, W. Washington, Chas. Zachary.

In Precinct No. 17 the day before the election the officers were so changed by the democratic Election Commissioners as to give the sheriff and judge to the democrats, and when Andy Walters, appointed judge, and Chas. Robinson, appointed clerk, by them, both of whom were republicans, failed to appear, their places were filled by John J. Ferrell, and Pat Mooney, democrats, although there were a number of republicans present qualified, and who offered to serve. There was a long and intentional delay at this precinct in opening the polls, the officers insisting that the challengers go out of the room, and the challengers declining to do so. In this way more than three hours were consumed, and when the polls closed there were standing in line waiting to vote 125 legally qualified voters, possessing the same qualifications as those of No. 14, as stated before. It is, perhaps, needless to add that all the officers in this precinct were democrats.

In this precinct, H. G. Austin, a democrat, was asked if he would serve as an election officer, and how he would count the vote, and when he responded that he would count it just as it was cast, he was promptly excused. In this voting precinct there were 240 ballots found in the box, whereas there are only 222 stubs, and the contestee charges that of these ballots, fifteen were fraudulently procured from some other place than the polling place and voted against him, and he asks that these fifteen ballots be thrown out and said 125 votes counted for him.

In Precinct No. 19, in the city of Lexington, the following persons, ninety-six in number, who were legally qualified as voters as these set forth in Precinct No. 14, were present and deprived of their right to register by the intentional delay of the democratic clerk of registration, and the refusal of the democratic officers to allow them to register:

All of these persons were present on the day of the election and would have voted for contestee had they been allowed to do so, and he asks that their votes be now counted for him. Said list of persons is as follows: R. Anderson, W. Ayres, A. Anderson, C. Allen, J. Adams, D. Allen, H. Allen, I. Bird, F. Butler, J. Buckner, G. Bush, W. Bush, T. Burnam, R. Bryant, P. Barnes, W. Barryman, J. Combs, R. Curd, J. Courtner, J. Coulter, J. Crosthwait, D. Coleman, F. Creth, M. Dupee, L. Daugherty, J. Ellis, N. C. Farmer, B. Fields, A. G. Graves, F. Gant, G. Grimes, J. Graham, G. Grigsby, A. Grimes, C. Howard, T. Howard, A. Hawkins, W. Harney, T. Howard, A. Huston, C. Hume, G. Hanley, E. Henderson, H. Havely, J. Harris, J. Irvine, T. Johnson, J. J. Jackson, G. Jackson, Kirk Jackson, J. B. Jones, W. Johnson, J. Johnson, W. Johnson, C. Jouett, F. King, H. H. Lyttle, J. Lee, F. Lyttle, R. Moody, C. Maple, E. Mason, W. Mundy, T. McDowell, T. McClure, H. Nichols, H. Porter, G. Powell, J. Pleasant, E. Raisor, W. Robinson, M. Sanders, G. Singleton, J. H. Stanley, G. Sutton, B. Sanders, N. Sutton, W. Smith, W. Taylor, W. Twyman, A. Turner, J. Tilford, W. Thompson, A. Taylor, G. Thompson, C. Veney, L. Whitson, W. White, P. Williams, L. B. Williams, T. West, E. Williams, J. White, W. A. Williams, C. Williams, J. Young.

This is a large republican precinct, and 125 voters legally qualified as those set forth in Precinct No. 14, were prevented from voting by the delay in opening the polls and by the democratic officers refusing to allow them to vote. All of these persons would have voted for contestee had they been allowed to do so, and he asks that their votes be now counted for him.

In Precinct No. 20, in the city of Lexington, the democratic officers delayed the opening of the polls until 8:30 o'clock A. M., and systematically delayed the voting until the closing of the polls at 4 o'clock P. M., by reason of which fifty legal voters, qualified as those set forth in Pre-

cinct No. 14, would have voted for this contestant had they been allowed to cast their votes, were left standing in the chute waiting to vote, and he asks that these votes be now counted for him.

In Precinct No. 22, in the city of Lexington, the following named legal voters, twenty-five in number, with qualifications as stated in Precinct 14, as set forth heretofore, and who were present at the registration, were deprived of their rights to register, and who being present on the day of the November election thereafter at said precinct, were deprived of their right to vote, each and all of whom would have voted for this contestee, and whose votes he now asks may be counted for him.

Said persons were deprived of the right to vote on the day of election by reason of intentional delay practiced by the democratic officers of election. Said list is as follows:

M. Alexander, J. Buchanan, B. F. Bell, J. Brown, W. Britton, A. Coleman, N. Cason, A. Elgin, B. Finnie, J. H. Harris, P. Jones, S. Lee. T. Monroe, J. Mosby, S. Parker, A. Parker, A. Russell, W. H. Rogers, M. Stevens, A. Sales, D. Sales, I. Todd, H. Talbert, J. Turner, G. Woods.

In Precinct No. 23 of the city of Lexington, when the republican judge, J. W. Scott, failed to appear his place was filled by the appointment of a democrat, Harry Barber, although there were republicans present thoroughly qualified and who offered to serve. In this precinct five ballots were rejected, which were cast for this contestee, for the only reason that the stamp was placed immediately above contestee's name and outside the square containing the republican emblem, which ballots he now asks shall be counted for him.

In precinct No. twenty-four, systematic delay was practiced by the democratic officers of the election, by reason of which thirty qualified voters, possessing the same qualifications as those doscribed in precinct No. fourteen, each and all of whom would have voted for this contestee, and whose

votes he now asks be counted for him, were prevented from voting because of the expiration of the hour fixed by law, at which time they were left standing in front of the polls. In this precinct A. S. Bloom was appointed republican judge, who was addicted to excessive drink, and was therefore incompetent, and S. P. Gross, republican sheriff, who knew nothing whatever concerning the duties of his office.

In this precinct 50 republican voters, each and all of whom would have voted for this contestee, and whose votes he now asks may be counted for him, and who possessed qualifications the same as those of the voters described in Precinct No. 14, were prevented from registering by delay, force and fraud. Said voters were present on the day of the election, but were refused the privilege of voting. The following is a list thereof: J. C. H. Allen, J. Allen, G. Anderson, G. Aldridge, T. Brown, S. W. Brice, D. Britton, G. Brown, S. Benna, W. H. Brown, J. Boldar, W. Chaldler, W. Coney, J. Daniels, Ed. Ellis, C. Givans, R. Garner, W. Harris, P. Harris, H. Hawkins, J. Jackson, G. Lair, R. Merritt, C. Mitchell, J. Nelson, A. Pullins, H. Parker, G. Rife, E. Smith, G. M. Smith, W. Stonestreet, W. Stonestreet, Jr., W. Smith, M. Thomas, E. Taylor, J. Talbert, J. Tibbs, F. Taylor, H. D. Williams, W. Williams, J. H. Williams, A. Webb, B. Williams, A. Winn, and others.

None of the officers of election appointed by the Commissioners in Fayette county were ever at any time tested as to their qualifications to serve.

In Precinct No. 25 of the city of Lexington, H. M. Skillman, Sr., was appointed judge, and being one of the busiest physicians in the city, it was impossible for him to serve as an officer of registration. Consequently failed to appear, and although there were a number of republicans present thoroughly qualified to serve in his place a democret was selected, and thus placing the control in the hands of the democratic party. By reason of which this contestee was defrauded out of fifty votes, which he now asks shall be counted for him.

On the morning of the election in this precinct, Skillman failing to appear, a democrat was appointed in his place, and thus control of this precinct was given to the democratic party.

In Precinct 26 of the city of Lexington, the republican judge failing to appear on the morning of the registration, although there were a number of republicans present and qualified, who offered to act, J. B. Sharkey, a democrat, not even a householder, was appointed to act and did serve. In this precinct fifty-seven republican voters, possessed of similar qualifications in all respects to those set forth in Precinct 14, were refused the right to be registered. In consequence of which they, on the day of the November election, 1899, although present and offering to vote, were denied the opportunity to vote. Each and all of these persons would have voted for this contestee, and he now asks that their votes be counted for him. Their names are as follows:

J. Black, G. Boone, W. Boone, G. Cornelison, R. Clarke, P. Carter, C. Caldwell, J. Jerrico, J. Dunlap, G. D. Douglass, G. Evins, G. Ellison, W. Finch, B. Finch, J. Frazier, I. Gaskin, R. Hutchison, H. Harris, H. Hunt, H. Hallack, R. Harvey, S. Hocker, J. Harvey, J. Hines, H. B. Hallock, R. Hathaway, G. Harris, J. Jones, J. Martin, S. Marchal, J. Martin, G. Moss, H. Porter, G. Parker, J. Penny, A. Rankins, J. Bradford, A. Raney, A. Reynolds, W. Smith, C. Smith, E. Smith, E. Salter, W. Thomas, W. B. Turner, E. Thomas, C. Wakes, H. Walker, J. T. Williams, B. Williams, H. Washington, J. P. Williams, C. Washington, W. White, P. M. Young.

In Precinct 28 of the city of Lexington, D. Mucci was appointed as one of the republican officers of registration when he could not read the Constitution of the State of Kentucky in English and was totally incapable of serving, and when in truth and in fact it was a well-known fact to the Election Commissioners that he was not a republican. In

this precinct the polls were not opened until 8:30 o'clock A. M. on account of a wrangling purposely started by the democratic officers concerning the challengers. Delay was systematically practiced during the day, so that when the polls closed there were fifty qualified republican voters possessing the qualifications of those set forth in Precinct No. 14, all of whom would have voted for this contestee, who were standing at the polls ready to and were unable to vote. A number of democratic thugs of the city of Lexington, in this precinct, after they had voted, formed themselves in line in front of the polls and after 1:30 o'clock P. M. would not allow any colored voters to pass into the voting place, and they were absolutely cut off from the right to vote, although the officers of election were taking no votes at that time. He asks that said votes be now counted for him.

In Precinct No. 30, in the city of Lexington, on the day of registration the republican sheriff failing to appear, his place was filled by the appointment of J. A. Hall, a democrat, although a number of qualified republicans were present willing to serve, and on the day of the election said Thompson failing to appear, his place was filled by the appointment of a democrat, although qualified republicans were present who offered to serve in this precinct. There were 100 ballots missing from the ballot book, and not enough ballots to allow the full vote of the precinct to be cast, by reason of which thirty voters possessing the qualifications of those described in Precinct No. 14 were prevented from voting, each and all of whom would have voted for this contestee; and whose votes he now asks may be counted for him.

In Precinct No. 31, in the city of Lexington, on the day of registration, W. F. Woolfolk, a republican officer, failing to appear, his place was filled by a democrat, notwithstanding the presence of numerous republicans who were well qualified to serve and willing to serve. In this precinct sixty qualified voters, possessing the qualifications set forth as to

voters in Precinct No. 14, heretofore described, were deprived by the democratic officers of registration from the right to register; and on the day of the election were likewise deprived, by reason of their failure to register, from voting, each and all of whom were present at the polls and would have voted for this contestee.

The following is a list of said voters: I. Anderson, A. Alexander, J. Akers, C. Askew, S. Broadus, J. Brock, R. Berryman, H. Curd, J. Calmese, N. Cleveland, D. Dunwell, W. Duffey, G. W. Edmonds, W. French, H. Gilbert, J. Gover, B. Hawkins, R. Hardin, Ed. Howard, J. Hite, H. Howard, T. Hickman, J. Hopewell, Perry Hill, J. Jackson, G. Jackson, H. Johnson, W. Jackson, A. Kirtly, D. Lee, J. Lewis, W. Marshall, W. Mopin, P. Price, A. Pillman, W. Pillman, S. Payne, G. Rodes, T. Redd, W. Sanders, S. Schoolin, F. Taylor, C. Thomas, W. Thomas, B. Williams, F. Williams, J. Williams, A. Wilson, H. Williams, J. Wilson.

On the day of the election S. S. Witt, republican officer of election, not being present his place was filled by the appointment of John Jenkins, a democrat. In this precinct there was systematic delay practiced by the democratic officers of election present, the polls not being opened until 8:30 A. M., and by reason of the delay practiced throughout the day when the polls closed 100 qualified republican voters, possessing the qualifications described as to Precinct No. 14, already set forth, were present standing ready to vote, but the polls closed and they were prevented from voting and exercising this privilege and these voters would have cast their votes for this contestee, which he now asks be counted for him.

In Precinct No. 32, of the city of Lexington, on the day of the registration. when Jas. Waller and John Faig, republican officers of registration, failed to appear their places were filled by the appointment of Tim Maher and George J. Roberts, both democrats, although the said Roberts was not a

householder. Cravins Lane, who had been appointed as republican sheriff the day before the election, was not a republican, which fact was known to the Commissioners, and voted the democratic ticket. When John Faig, republican judge, failed to appear on the day of the election, said George Roberts, a democrat, was given his place, although there were qualified republicans present, both on the day of the registration and day of the election, ready and willing to serve in place of the absent republican officers, but they were refused permission to qualify. In this precinct on the day of the election all the officers were democrats, and the vote was practically by an open ballot, more than 100 ballots having been cast in that way. E. L. Marsh, a member of the school board in the city of Lexington, was in and out of the voting places at intervals during the day, and was in the booth with voters marking ballots.

It is not surprising that the vote returned from this precinct is shown to have been 225 for contestant, and seventy-eight for contestee, when, had the election been fair, and had it not been for the occurrences stated, this contestee would have received 150 votes, and the contestant would not have received any more than that number. At this precinct on registration day, a negro was present who was a qualified voter of said precinct, and who for no other reason than that he was a negro, was cruelly beaten by Mike Monahan, an Irish tough, and no peace officer even attempted to prevent this inexcusable act. He asks that the vote in this precinct be thrown out and excluded from this count.

15. That the contestant in order to procure his nomination, by the democratic party for the office of Governor, did corruptly use money and other things of value, and practiced fraud, intimidation, bribery, and other corrupt methods, and that but for this conduct he never would have been nominated for the office which he now claims, and that by reason of such conduct he has forfeited any right to said office.

16. That the partisan friends of contestant had the exclusive control of the appointment of election officers in this State, many of whom were incompetent, but that in no instance did said partisan friends controlling same test or inquire into the qualifications of any one who was appointed.

17. That in Scott county the county Election Commissioners after having appointed registration officers changed the said officers for the election. In the registration they gave to contestant's party the clerk who had the control of all the matters of dispute, but they so arranged at the election to secure the sheriff, thereby giving them the control of all contested votes in the election; that in the court-house precinct R. H. Jouett was appointed judge but did not sign the poll books or returns, but George Peak, who was not an election officer, did sign in his place without any authority whatever. In Great Crossings Precinct Burrell Rankin was appointed as republican clerk of the election and was unable to read and write. This fact was made known by affidavits to the democratic county Commissioners who refused to appoint a competent republican in his place although there were many such who were qualified, ready and willing to act. In White Sulphur Precinct, Cash Hall, appointed republican judge, and John Lawson, republican clerk, could neither read nor write.

In Turkeyfoot precinct John Truit, appointed republican judge, was not a householder of said precinct; in Oxford precinct D. A. Powell, appointed democratic judge, Wright Kimbro, appointed democratic sheriff, Walter Bush, appointed republican clerk, were not householders of said precinct, the said Bush being also under twenty-one years of age; and John Shelkey, appointed republican judge, was a worthless, drunken Irishman, morally unfit for any position of responsibility. Affidavits were filed for the removal of these five persons with the said democratic Commissioners but they refused to remove them. The democratic officers would challenge a vote, so mark it and deposit it in the ballot box, and

in counting would pretend to select from the ballot box the ballot voted by the challenged party, marked challenged, and refused to count it, and returned it to the county Commissioners, because of said mark, who would refuse to count it because marked challenged. In Oxford precinct there were ten ballots of this character cast; in Powder House precinct, four ballots; in West Stamping Ground precinct, six ballots; in Great Crossings precinct, four ballots; in East Stamping Ground, five ballots; in City School precinct, eighteen ballots. Each and all of these ballots were cast for this contestee and the republican party.

The same number of ballots voted for this contestee and the republican party in the precincts last above mentioned were thrown out because the clerk of election failed to sign his name on the back of same, and he asks that said seventy-four ballots be now counted for him; that on the night of the 6th of November, immediately preceding the day of the election, 1899, Judge J. E. Cantrill, the Judge of the Circuit Court, in whose circuit Scott county is included, and who had a son who was a democratic candidate for the Legislature in said county, awakened the sheriff from his bed and had him to appoint deputy sheriffs at the following places, to-wit: court house, city school, engine house, powder house, Great Crossings, White Sulphur. These deputy sheriffs were armed, and on the day of the election, without authority, frequently passed in and out of the voting place during the casting of the vote, superintending the same in an authoritative way, and acting in such manner as to intimidate and drive from the polls many qualified voters who would have voted for this contestee; that at Oxford precinct Alf Moore, the republican inspector, duly appointed by the county republican executive committee, was refused admittance, and the vote was counted in his absence by reason of which said vote was fraudulently manipulated, and this contestee was deprived of fifty votes which had been cast for him and fifty

votes which had not been cast for the contestant were given to him, which fifty votes he asks shall be counted for him and fifty votes be deducted from the vote of contestant; that in the county of Scott there was not a single republican sheriff of election appointed, by reason of which this contestee was deprived of 100 votes which would have been cast for him by persons who were citizens of the State of Kentucky, had resided in the State for more than twelve months, in the county of Scott for more than six months and in the precincts in which they offered to vote for more than sixty days, and who labored under no legal disability, not only so by reason of these facts at least 100 illegal voters were allowed to cast their votes and the same were counted for the contestant, which he now asks shall be deducted from the vote of contestant; that in Porter precinct persons who had voted for contestant were allowed to re-enter and remain in the voting booth, and at one time there were as many as a dozen of them in the same.

At this precinct the sheriff of the election, who was a democrat and supporter of contestant, went outside of the voting booth several times during the day and held consultations with democratic workers, notifying them how different men had voted and being instructed by them to look after the manner in which certain men should vote who had been bribed by them. In McFarland precinct the same irregularities and frauds were committed. In Turkeyfoot precinct the ballot box was not locked during the entire day. In this precinct three ballots which were cast for this contestee were marked challenged by democratic officers of the election, but they were deposited in the box, and when they came to count the ballots they refused to count these upon the ground that they were marked "challenged." In these three last mentioned precincts the contestant obtained large majorities, superinduced by reason of the frauds and irregularities mentioned. In Great Crossings and White Sulphur precincts the

deputy sheriffs mentioned went into the booths and forcibly threw out of same one of the challengers. In East Stamping Ground precinct five ballots voted for this contestee were challenged and marked with the word "challenged," but they were deposited, and when the count was made they were thrown out because said marks were upon them.

18. In Mercer county 113 ballots which were cast for this contestee were thrown out in the count by the county Election Commissioners without any excuse. These were in the Eighth precinct, Third precinct of ward C, and South Bergin precinct, No. 11, No. 3 precinct, Ninth precinct, and in the precincts of wards B and E. The contestee now asks that these votes may now be counted for him.

19. That in Woodford county, at the Midway precinct, one Woolum, appointed republican clerk of the election, was bribed by the partisan friends of the contestant to delay the voting, and did so delay same that when the polls closed, all of the following-named persons, who would have voted for the contestee, were remaining at the polls and unable to cast their votes, to-wit: John Anderson, Tom Anderson, Wm. Anderson, Jas. Baker, Jr., William Bryant, Jno. Butler, Chas. Bruce, Alfred Brown, Will Bohannon, Will Baker, Thomas Clark, Andrew Clark, Elias Channels, Sanders Carr, Jim Clay, Wm. Darneal, Albert Douglas, Will Fowler, Theodore Frazier, Chas. Frazier, App. Frazier, Thomas Green, Geo. Hickman, Bob Hall, Henry Hawkins, Thos. Wickliffe, Chas. Williams, Nathan Walker, Richard Webster, Louis Watkins, Robt. Webster, Harry Young, Henry Young, Preston Young, Dave Hamilton, John Handy, Ed Hall, Chas. Johnson, Geo. McDavid, Miller Miles, Jim Newman, Anderson Owsley, Milton Penn, John Parks, Armistice Penn, Robt. Plersants, W. U. Patton, Boone Railey, Bob Romp, John A. Robinson, Arch Redd, Andrew Smith, Louis Molliver, Albert Thompson, Frank Thomas, Matt Taylor, Willis Twyman, Geo. Taylor, A. W. True.

That the following named persons went repeatedly to the polls on the day of the election, at the Midway precinct, for the purpose of voting, and on each occasion were unable to do so, because said Woolum pretended to be busy, and returned to their respective places of business, and were unable to and did not vote by reason of said delay, to-wit: Gene Anderson, I. N. Biddie, Knotty Butler, A. P. Boswell, John Baker, Al Baker, W. E. Cropper, Sanders Carr, A. E. Clark, Jas. Canada, Nelson Fry, Chas. Foyle, J. M. Hoge, Bud Jordan, Will Jones, Will Johnson, Jack Johnson, Jno. Johnson, Alfred Johnson, D. H. Lehman, W. A. Long, Alex. Long, Bart Long, Jno. Long, Cliff Miles, Earl May, T. D. Martin, D. J. McCann, Chas. McAndy, Jno. Parks, L. F. Payne, Will Powell, H. C. Poynter, Alex. Robinson, H. B. Russell, J. P. Rodgers, Arch Rena, Geo. Robinson, Bob Stepp, Anthony Scott, W. E. Sleet, R. S. Starks, H. C. Shipp, A. W. Stanhope, D. H. Thomason, Henry Tucker, O. T. Trent, Willie Thomas, Warren Viley, Will Washington, Nathan Walker, Geo. Wise, D. T. Wilson, Pres Williams, R. L. Price, Jno. Wise, Alex. Driver, W. B. Dixon, Will Dixon, Jr., Sam'l Darneal, Bud Smith.

20. That in Breathitt county the most outrageous fraud and intimidation was practiced on the inspiration and by the advice of one D. B. Redwine, who entered into a conspiracy with contestant to fraudulently and by force enable him to obtain his nomination and election. In this county only one man recommended by the republican Election Commissioner was appointed an officer of the election.

In Jackson Precinct No. 1, ten persons were allowed to vote for contestant, and their votes were counted, some of whom did not live in the county, some not in the precinct, some under age, and that in the same precinct Wm. Boland and Davis Kellman, who were citizens of and had resided in Kentucky for twelve months and in the county of Breathitt for six months and the precinct in which they offered to vote

for sixty days immediately preceding said election, were not allowed to vote. He asks that said votes be now counted for him.

In Jackson Precinct No. 2 the republicans were given K. C. Hardin as clerk and Mike Robinson as judge, neither of whom possessed any qualifications and both of whom were timid and were kept drunk during the entire day by the democratic officers of election. Persons not officers of said election went into the voting booth frequently with whisky, treating the officers of the election. In both of the precincts crowds were around the door of the voting place and were not kept back from the same although the republicans requested that it should be done.

In Jackson Precinct No. 2, after the polls closed, James Hargis, Elbert Hargis, Ben Hargis, Curt Jett, Jesse Fields, Geo. Spencer, Hiram Hayes, and others congregated within ten feet of the voting booth, and shot thirty or forty shots with large revolvers for the purpose of intimidation, and all of the republicans were ejected from the hall of the court house. In this precinct the sheriff of the county and the sheriff of the election, together with said James Hargis, forcibly ejected A. C. Carpenter, republican inspector, from said voting room, at the point of revolvers, punching him with same as they put him out. After he had been driven from the booth they fired their pistols around the court house so that no republican dared to go in the neighborhood of the voting booth. The republican clerk at this Precinct No. 2 was so drunk that he knew nothing whatever about the count and does not now remember how it was done; and the republican judge was so drunk that he could not even now tell when or how he left the voting place. Both of these officers were strenuously objected to by the republican county Election Commissioner at the time they were appointed.

During the day democratic toughs knocked several republicans in the head and drove them away from the polls, there-

by preventing them from voting, and forcibly arrested Thomas Tracy and Jack Little, both of whom would have voted for this contestee, and confined them in jail until the polls were closed. Thomas Tharp, an ex-penitentiary convict, and who was in jail on the day of the election on a criminal charge, was brought out and voted for the contestant. In this Precinct No. 2, prior to the election a careful and correct poll of the votes had been made by the republican committee and others, which showed and which was correct, that the republicans had twenty-five majority in said precinct and the contestee states that he polled twenty-five majority in said precinct. Notwithstanding this the certificate of the election officers shows that the contestant carried the precinct by a majority of 181, thus defrauding contestee out of 206 votes, which he asks may be so counted for him.

In Crawford precinct No. 4 Thomas Johnson was appointed republican judge although he had never given any but a democratic vote, was incompetent, old and blind. The republican sheriff, Henry Cundiff, was an ardent supporter of contestant. Both of these officers were objected to by the republican Commissioner. During the taking of the vote one Crawford was fraudulently given the certificate of election as representative in the Lower House of the present General Assembly from Breathitt and other counties, openly stated, with his pistol in hand, that if he and contestant did not receive enough votes to carry the precinct that the vote would be counted for them anyhow or the house in which it was being taken would be bombarded. At this precinct whisky was kept in the voting room all day and the voters were allowed to stand at the door of the voting room although serious objection was made by republicans. S. P. Kash, the republican inspector of this precinct, duly appointed by the republican county executive committee, was refused admittance into the voting place, and Thurston Roberts, republican challenger, duly appointed as aforesaid, was forcibly ejected

from the voting booth. A careful and correct poll of this precinct had been made by the republican committee and others preceding the election which truly showed that the republicans had seventeen majority in said precinct, which vote was actually so polled, but when the vote was pretended to be counted it was certified that contestants had carried same by 111 majority so that contestee charges that he was defrauded in this precinct out of 128 votes which he actually received, which he now asks may be counted for him.

In Crockettsville precinct No. 6 Jasper Arrowwood was appointed republican judge and Hiram Sebastian republican sheriff, both of whom were illiterate, ignorant, and incompetent, and were appointed over the objection of the republican county Election Commissioner. Asberry Spicer, democratic clerk of this precinct, was then under indictment for murder and log stealing. In this precinct Ed Callahan, democratic challenger and inspector, ruled the entire election in the most high-handed way, and he and his brother Sam Callahan (who was not an officer of election), counted the ballots while the republican inspector kept tally as given out by Sam Callahan. After Sam Callahan finished calling the vote J. P. Turner, republican inspector and challenger, duly appointed as such by the republican county executive committee, demanded to be allowed to inspect the ballots and see if they had been properly called, which Callahan refused to allow him to do and put the ballots in the fire and burned them, Turner not being able to see how a single ballot was voted. In this precinct before the election the republicans had taken a careful and correct poll of the votes which showed truly that the republicans had a majority of fifteen, and which was really the true delivery of the vote on election day, but the certificate of said election officers showed that the contestant had carried the same by a majority of eighty-seven. The contestee says that in this precinct he was defrauded out of more than 100 votes and that same should be now counted for him.

In Lost Creek, Precinct No. 8, whiskey was kept in the voting room all day. John Napier, republican judge appointed over the republican commissioner, was illiterate and incompetent. James Hargis, as contestee is informed, believes and charges, offered Louis Combs, democratic sheriff, one bundred dollars to count the vote as he wanted it counted, said Hargis being an active friend and partisan of contestant. John Fraley, republican challenger, was refused admittance into the voting booth in this precinct.

In Troublesome Precinct No. 9, fifty votes were voted openly on a table before all the officers of the election when the parties voting same were each and all of them perfectly competent to vote their ballots as required by law. Delaney Allen sat on his horse outside the voting place and voted. Contestee is informed, believes and charges that said James Hargis offered John E. Miller, republican judge of this precinct, one hundred dollars to allow the vote to be counted for contestant as he desired it to be done, which offer was refused.

In Lewis Fork Precinct No. 10 three of the officers of election were democrats and supporters of contestant, and were appointed over the objection of the republican commissioner.

In Spring Fork Precinct No. 11 all of the officers of election were democrats and appointed over the objection of the said republican Commissioner. A careful and correct poll of this precinct was made by the republicans and others preceding the election, by which it was shown, and which was true, that the precinct was democratic by fifteen majority, but when the count was made it was reported and certified that contestant had carried same by ninety majority. In this precinct contestee charges that he was defrauded out of seventy-five votes which were actually cast for him. He asks that said seventy-five votes be now counted for this contestee.

21. While the contestee contends, and will contend, that the texture of the ballots used at any of the precincts in any

of the counties of this Commonwealth can not, and in good conscience ought not to, invalidate the vote of any county or that of any voter of any county in that neither the candidate nor the voter were in any sense responsible therefore; he alleges that the Bradley & Gilbert Co., of Louisville, Ky., printed all of the ballots used for the counties of Adair, Allen, Butler, Boyd, Carter, Caldwell, Clay, Greenup, Hart, Letcher, Lee, Muhlenberg, Monroe, Pike, Wayne and Whitley, complained of by contestant; and in the event that this Board should hold that the vote of these counties or any of them should be thrown out on this account, he further charges that the said company also printed all the ballots used at the late election in the counties of Barren, Fulton, Harrison, Henry, Jessamine, Marion, Meade, Oldham, Shelby, Robertson, Bath, Trimble, Boone, Carroll, Grant, Spencer and Floyd, all of them giving majorities for and having been carried by the contestant in said election, as shown on the face of the returns, used therein and therefor the same character of paper, of the same color, thickness and texture as those used in the counties complained of by the contestant; and that the votes of these counties herein complained of should also be thrown out, disregarded, and declared null and void. In the event the contention of contestant regarding these ballots should be held good, the contestee says:

That the elections in the counties of Wolf, Powell, Knott, Elliott, Menefee, Breathitt, Hardin, Bracken, Simpson, Ballard, Graves, Calloway, Scott, Pendleton, Larue and Owen were not free and equal, and in each precinct of said counties the voting was not done by secret ballots, as provided by the Constitution and laws of the State, but was done by the electors with ballots, in each precinct in each and all of said counties, that were composed of paper so thin and transparent that the printing on said ballots and the stencil mark of the voter thereon could be easily and readily

seen and distinguished, and was so seen and distinguished by other persons than the voters from the back of the ballots how the voter had voted, when the ballot was folded and when the ballot was not folded, and that these ballots were printed and prepared by the several officers of these counties, whose duty it was to furnish and prepare them, for the purpose and with the design of ascertaining and reporting the manner in which the votes of each and all of the voters of said counties were cast; all of which was done in collusion with the contestant and for his benefit.

That the election in the county of Owen was not free and equal and in each precinct of said county the voting was not done by secret ballot as provided by the Constitution and laws of the State, but was done by the electors with ballots so printed and prepared that when the several judges of the election in the various precincts of the county attempted to separate from the ballot the secondary stub thereon the stencil mark of the voter thereon could be easily seen and distinguished and was so seen and distinguished by the said judge and by other persons than the voter how the voter had voted when the ballot was folded, and that these ballots in the said county of Owen were so prepared and furnished by the clerk of said county, with the corrupt purpose and design of aiding and assisting the democratic officers of the various precincts of said county in ascertaining, and they did so ascertain, how the votes of the several voters of the county were cast, all of which was so corruptly done in collusion with the contestant and for his benefit and in his behalf.

22. That in Precinct No. 11 in the county of Breathitt, Foster precinct in the county of Bracken, and Slater precinct in the county of Ballard there were no republican officers of election appointed by the Election Commissioners who served in that capacity during the day; and that in Cuba precinct in Graves county, Laura Furnace precinct in Trigg county, and Vogler's precinct in Franklin county,

only one republican officer out of four was appointed, although a sufficient number of republican voters duly qualified to hold these several offices lived and were resident in each and all of these precincts, and were present at the polls ready and willing to act.

23. That in Gaines' Stable precinct in the county of Franklin the republican officers duly appointed by the Election Commissioners of said county were intimidated and driven from the polls by force, and four partisan democrats served as officers of election of that precinct; and that as a consequence thereof in all of these precincts the majority of votes were counted and declared in favor of contestant, which the contestee now contends should not be counted or considered in ascertaining the result of the election in this Commonwealth but should be set aside, disregarded and held for naught.

24. That in Precincts "4" and "8" in the county of Breathitt, "8" in the county of Harrison, —— precinct in the county of Garrard, Gaines' Stable, Vogler, and Bridge precincts in the county of Franklin, in each and all of which a majority of the votes were declared and counted in favor of the contestant, and which should not be counted in ascertaining the result of the election in this Commonwealth, but should be set aside, disregarded and held for naught because the several Election Commissioners in and for the counties above named refused to appoint eligible persons to act as officers of the election, but over the protests of the various republican county committees of the several counties, appointed persons who were not elligible under the Constitution and laws of this State.

25. That in the Grange City precinct in the county of Fleming the clerk appointed by the Commissioners of said county was a known inebriate; that the democratic officers in said precinct had whiskey in and at the poll, and that the said clerk became and was so drunk that he was unable to

take the vote of said precinct, by reason of which more than fifty qualified voters of the said precinct, republican in politics and who would have voted the straight republican ticket, were prevented from casting their votes in said precinct, all of which he asks should be counted for him.

26. That the votes cast at Rogers precinct in the county of McCracken, Bridge precinct in the county of Franklin, East Stamping Ground precinct in the county of Scott, and Precinct No. 11 in the county of Larue should not be considered in ascertaining the result of the election in this Commonwealth, but should be disregarded, set aside, and held for naught because the election clerk in each and all of said precincts failed and refused to write his name across the back of the stub or any of the ballots used in all or any of the said precincts or to sign his name in any place thereon.

27. That the votes cast at Precinct No. 6 in the county of Elliott, Precincts Nos. "2" and "4" in the county of Breathitt, No. "4" in the county of Monroe, Raynick precinct No. —— in the county of Marion, Precincts Nos. "5" and "14" in the county of Harrison, Precinct No. 3 in the county of Garrard, Precinct No. "8" in the county of Simpson, Bugg precinct in the county of Hickman, Bell's Mine precinct, in the county of Hickman, South Cadiz precinct in the county of Trigg, Millville precinct in the county of Woodford, Precincts Nos. "7"–"8"–"10" in the county of Larue, and ———— precinct in the county of McCracken, should not be counted or considered in ascertaining the result of the election in this Commonwealth, but should be set aside, disregarded, and held for naught because the officers of election in each and all of said precincts corruptly permitted persons other than officers of election to remain at and in the poll and in less than fifty feet thereof, who were not there for the purpose of casting their vote, all of which was done by said officers of election in collusion with adherents of the contestant, for the purpose of intimi-

dating republican voters from approaching the poll, and that many republican voters in each and all of said precincts were intimidated and prevented from going to the polls, and casting their votes at said election, which would have been cast for the contestee, but for such conduct and intimidation on the part of the said officers.

28. That 239 votes cast by voters in the several precincts hereinafter named, possessing all the qualifications required by law, being twenty-one years old, and being citizens of the United States, and having lived in the State and their several counties and precincts for the time fixed by law, on legal ballots not marked, or designated, and all cast for the contestee, were not counted for him, but were without cause or reason challenged by the democratic challengers in the several precincts, and on that account left uncounted, because of a difference of opinion in the minds of the judges of the election in the several precincts hereinafter named. None of those ballots were sealed up and returned to the clerks of the several County Courts, but were all without right or authority destroyed and burned for the purpose and with the intent of injuring the contestee, to-wit:

Twenty-five in South Greensburg precinct, in Green county; thirty-nine in West Bryantsville precinct in Garrard county; four in precinct No. "2" in Lincoln county; twenty-five in Precinct ——, in Logan county; fifty in Wingo and Lowes precincts in Graves county; forty-four in Bridge precinct in Franklin county and fifty-two in Gas House precinct in Franklin county, all of which he now asks should be counted for him.

29. That the election claimed to have been held in Grassy Lick precinct in the county of Montgomery, Precinct No. 2 in the county of Breathitt, Precinct No. 14 in the county of Barren, Precinct No. 2 in the county of Simpson, and in the counties of Monroe, McCracken and Carroll, was not free and equal as provided by the laws and Constitution

of this State; but was held and the votes counted and the results declared under force and duress by prominent members of contestant's party, for the purpose of overawing, intimidating, disturbing and keeping voters of said precincts and counties from going to the polls, and pursuant to the said purposes thereby kept many hundreds of voters away from said polls who otherwise would have voted for the contestee, and said election for said parties was not an open, fair, free or equal one, and he asks that the votes in these several precincts and counties be neither counted or considered in ascertaining the result of the election.

30. That the election held in the city of Paducah in the county of McCracken and in each and every precinct thereof was not free and equal as provided by the laws and Constitution of this State, but were held and the votes counted and the results declared under police domination, force and duress, done for the purpose of overawing, intimidating, disturbing, and keeping voters in said precincts from going to the polls, and pursuant to said purposes did thereby keep many voters away from said polls who otherwise would have voted for the contestee, and said election for said reasons was not open, fair, free and equal, and should not be counted or considered.

31. That in the precincts of East Augusta and West Augusta and Chatham in the county of Bracken, and Precinct No. 2 in the county of Simpson, the clerk of the county court of the two counties herein named failed to provide and distribute in these precincts a book of ballots containing fifty per cent more ballots cast at such precincts or any one of them at the next preceding election, or any ballots more than these, and in fact failed to provide a sufficient number of ballots upon which the legal voters of the district could cast their votes, and that in consequence thereof a large number of republican voters in the said East Augusta, West Augusta, and Chatham precincts in the

county of Bracken, all of whom should have cast their votes for contestee, were prevented from voting at said election.

32. That in precinct No. 1, in Simpson county, J. K. Caldwell, J. P. Caldwell, J. W. Hickman, Geo. Holland, Huse Reed, B. H. McCall, E. L. Rogers, J. E. Dickson, J. B. Uals, H. H. Murray, T. E. Murray, J. H. Henson, Leslie Thomas, Enoch Henson, Willis Thomas, O. W. Wright, Jim Mahew, Jno. Castella, Jim Barnes, Henry Rogers, Walter Wright, I. N. Foster, Raymond Kellar, Sam Corbin, and many others, all of them republicans possessing the legal qualifications herein above given, and all of whom were there with the expressed intention of voting for contestee, and would have so voted except for this failure of ballots, and were prevented from casting their vote at said election—all to his great damage, and he now asks that these votes be counted for him.

33. That the votes cast at Precinct No. 8, in Wolf county, should not be considered in ascertaining the result of the late election, and that the election held there should be disregarded, set aside, and held for naught because the sheriff of the county failed to provide for use at said election, in said precinct, a strong and well made ballot box, or any ballot box, in which votes cast at said election were to be placed, and that on account of this failure the officers of election deposited the ballots cast by the voters in an open nail keg, secured or fastened in no way.

34. That the votes cast at Precincts Nos. 2 and 5 in Lee county, Precincts Nos. 1 and 2 in Menefee county, No. 6 in Harrison county, Turkeyfoot precinct in Scott county, and Trigg Furnace precinct in Trigg county, should not be counted or considered in ascertaining the result of said election because the ballot boxes used in each and every one of said precincts were not examined before the voting began by the judges or either of them in any of said precincts, nor were the said ballot boxes securely locked or fastened in any way at any time during the progress of the election.

35. That the votes cast at Jones' Fork precinct, in Owen county, and Gaines' Stable precinct, in Franklin county, should not be counted or considered in ascertaining the result of said election, but should be set aside, disregarded and held for naught because the adherents of contestant, in order to prevent republican representation at the casting of the vote and the counting thereof, corruptly conspired together to intimidate and drive from the voting places all the republican officers in each and every one of said precincts, and in fact in carrying out said conspiracy, as above corruptly made, did overawe, intimidate and drive from the voting rooms all of the republican officers, inspectors and challengers, and by reason thereof the democratic officers received and counted the votes cast in said precincts, and all of them, and the contestee charges that many votes cast for him therein were not counted as cast, but were fraudulently counted for the contestant by the said democratic officers of election in each and every one of said precincts.

36. That the votes cast in Jeffersonville precinct in Montgomery county, Precincts Nos. two, three, six and eight, in Breathitt county, Courthouse precinct in Meade county, Precinct No. 3 in Garrard county, Goodnight precinct in Barren county, Oxford precinct in Scott county, and Gaines' Stable precinct in Franklin county, should not be counted or considered in ascertaining the result of said election, but should be set aside, disregarded, and held for naught because the challengers duly, legally, and truly appointed by the proper authorities of the republican party in the several precincts and counties above mentioned, were not permitted to enter the voting rooms or any of them or remain at or near the doors or any doors of the voting room or rooms in any of the said precincts, and further that the county executive committee of the republican party designated a suitable person in each and every one of said precincts to be present at, witness and inspect the counting of the votes therein, and

notwithstanding the fact that the democratic officers of election in each and all of said precincts had actual notice and knowledge of such appointments, in each and all of said precincts refused to permit the said inspectors or any of them to be present at, witness, inspect or count the said vote in any of said precincts herein above mentioned; although in each and every one of them, such inspectors duly appointed as above alledged, presented themselves at the voting places at said time and demanded admission thereto.

37. That the election in Precinct No. 1 in Elliott county, and Precinct No. 9 in Breathitt, and in Millville and Troy precincts in Daviess county, were not free and equal in said precincts or either or any of them in this—that the vote was not done by secret ballot as provided by the Constitution and laws of this State, but was done openly by each and all of the voters in each and every one of said precincts who desired so to vote. The contestee therefore asks that each and every vote cast in each and all of said precincts be neither counted or considered in ascertaining the result of said election, but be set aside, disregarded and held for naught.

38. That in Precinct No. 2 of Lee county forty-seven straight republican ballots, in Precinct No. 2 in Lincoln county forty-nine republican ballots, in the county of Lincoln fifty straight republican ballots, and in the county of Fulton sixteen straight republican ballots, voted by placing the stencil mark under the log cabin and every one of which was delivered to the proper officer by the voter, without any distinguishing mark, defacement, or mutilation externally or otherwise thereon, was, while in the custody and control of such officer, so mutilated and defaced that the precinct officers and county commissioners failed and refused to count the said ballots or any of them for the contestee, all of which was so done to the damage of said contestee, for the corrupt purpose and intent of defrauding this contestee out of said ballots, which he now contends should be counted for him.

39. That in Precinct C in the city of Middlesborough in Bell county, six straight republican ballots; in Brentwood precinct, county of Green, 106 straight republican ballots; in Courthouse precinct in Meade county, 1 straight republican ballot; in Precinct No. 4 in the county of Bell, 24 straight republican ballots; in Precinct No. 1, county of Bell, 3 straight republican ballots; in Precinct No. 1 in the county of Garrard, 51 straight republican ballots; in West Bryantsville precinct, in said county of Garrard, 59 straight republican ballots; in Union School House precinct, in said county of Garrard, 61 straight republican ballots; in Precinct No. 1 in the county of Logan, 11 straight republican ballots; in the county of Mercer, in Precinct No. ——, 113 straight republican ballots; in Precinct No. 3 in the county of Barren, 10 straight republican ballots; in Precinct No. 4 in Muhlenberg county, 7 straight republican ballots, and in West Courthouse precinct in said county of Muhlenberg, 1 straight republican ballot; in Oxford precinct in the county of Scott, 10 straight republican ballots; in Courthouse precinct in said county of Scott, 4 straight republican ballots; in West Stamping Ground precinct in said county of Scott, 6 straight republican ballots; in Great Crossings precinct in said county of Scott, 4 straight republican ballots; in East Stamping Ground precinct in said county of Scott, 5 straight republican ballots; in City Schoolhouse precinct in said county of Scott, 18 straight republican ballots, and in Turkeyfoot precinct in said county of Scott, 3 straight republican ballots; all of said ballots in all of said counties and precincts herein mentioned having been voted by having the cross of the stencil mark placed under the republican device, and with no distinguishing mark, defacement or mutilation externally or otherwise thereon by which the same or any of them could be distinguished or identified, were each and all of them cancelled, thrown out, and neither counted or considered by the several precinct and county officers in the precincts and

counties herein named—all of which was done by said officers without reason, cause or excuse, and all of which he now asks should be counted for him.

40. That the votes cast at Precinct No. 13 in Harrison county should not be counted or considered in ascertaining the result of this election, but should be set aside, disregarded, and held for naught because after the officers of the election had duly, properly, and legally closed the polls of said precinct at 4 o'clock in the afternoon of the day of the election, the time fixed by law, they illegally and corruptly suffered and permitted twenty straight democratic ballots to be cast by twenty democratic voters in the said precinct—all of which were counted for and in favor of the contestant.

41. That the democratic officers of election in precinct No. 3, of the county of Garrard were guilty of gross frauds by reason and in consequence of which one hundred more democratic votes were counted and certified as having been cast in said precinct than had ever been cast before, or were cast at that time. The contestee charges and alleges that one hundred votes more than were actually cast for the contestant in said precinct were fraudulently and corruptly counted and certified for him by the democratic officers therein. As a specification under this charge he alleges that the democratic judge in said precinct at said election refused to place all or any of the ballots cast in said precinct on that day in the ballot box publicly or in view of the other officers of the election, but over and against the protest of the republican officers of election thereof, kept the ballot box in a corner of the room where no one could see whether or not he placed the ballots as cast by the voters in the ballot box, and these votes he asks should not be counted for contestant.

That the vote cast at Gallman's precinct in McCracken county should not be counted or considered in ascertaining the result of this election, but should be set aside, disregarded, and held for naught because none of the ballots used

by the voters at said election in said precinct, were placed in the ballot-box by the judges of the election or either of them, but were taken from the voter by the challenger of the democratic party in said precinct and by him placed in said ballot box, he having taken possession of said ballot box and unlawfully kept it in his custody and under his control the entire day.

42. That in Precincts Nos. 1 and 7, in the county of Martin, the officers of election and the county Commissioners as well, unlawfully suffered and permitted C. W. Crum and A. D. Spears to vote; in Precinct No. 5, in the county of Lee, said officers so permitted Chas. Morgan, Wm. Wade, J. M. McGuire to vote; in Precinct No. 2, in the county of Breathitt, said officers so permitted Sam Fields to vote; in Wingo precinct, in Graves county, said officers so permitted Will Elliot to vote, and in Murphey's Barn precinct, in said county, so permitted West Williams so to vote, and in Houseman's precinct, in said county, so permitted Henry Mason to vote; in Ward No. 1, in the city of Mayfield, in said county, said officers so permitted J. N. Sanderson to vote; and in North Cadiz precinct, in the county of Trigg, said officers so permitted A. H. Trace, Fletcher Goodwin, T. A. Jefferson, and Campbell Holt so to vote—all of whom cast their votes in favor of contestant and the straight democratic ticket, when in fact none of them were legally qualified voters under the provisions of Section 147 of the Constitution and Section 1439 of the Kentucky Statutes; and the contestee now asks that these votes be disregarded, set aside and held for naught in ascertaining the result of this election.

43. That in Precinct No. 5 in the county of Lee, the precinct officers of election and the county Commissioners as well, unlawfully and arbitrarily refused to permit Wesley Jewell, Eli Simpkins, and Wm. Bryant to vote; and in Grassy Lick precinct in the county of Montgomery said officers so refused to permit Isaac Hurt to vote; and in Precinct No. 2 in the county of Breathitt said officers so refused to permit Wm. Bolan,

David Killeman, Thos. Tracy and Jack Little to vote; and in Precinct No. 3 in the county of Whitley said officers so refused to permit Wm. Croley and Gib Jones to vote; and in precinct "A" in the city of Middlesboro in Bell county said officers so refused to permit Jas. Forest, Henry Singleton, Budd Evans, Proctor Knott Bronston, Jim Harris, Wm. J. Martin, Alonzo McGinnis, Chas. Cussins, Caleb Hatcher, Brownlow Sawyers, Will Hayett and River H. Folks to vote; and in South Greensburg precinct in the county of Green said officers so refused to permit Jeff Shively, D. T. Lowe and W. C. Heizer to vote; and in Courthouse precinct in the county of Meade said officers so refused to permit Willis Jones to vote; and in Precinct No. 2 in the county of Lincoln said officers so refused to permit A. Dutton, and in Precinct No. 3 in said county said officers so refused to permit Emanuel Barrow, Tim Higgins, G. W. Taylor, Monroe Hickman, Henry Fish and John H. Robinson to vote; and in Precinct 1 in the county of Allen said officers so refused to permit D. Brown and Voss Fortune to vote; and in Precinct No. 2 in the county of Gallatin said officers so refused to permit Hoter Kemble and Henry Jackson to vote, although each and every one of the voters herein above named were male citizens of the United States of the age of twenty-one years, who had resided in this State one year and in the several counties in which they offered to vote six months, and in the precinct sixty days next before the day of election, and who possessed none of the disqualifications mentioned and set forth in the Constitution and laws of this State, and all of whom were epublicans who would have voted for the contestee and the straight republican ticket. He asks that these persons be considered and counted by this board in ascertaining the result of the election.

44. That in the county of Jackson the clerk of the County Court failed to provide and distribute to the election officers of Precinct No. 4 in said county a book of ballots

containing fifty per cent or any per cent more ballots than were cast at said precinct at the election next preceding the November election, 1899, and in fact failed to provide a sufficient number of ballots upon which the legal voters of said precinct could cast their votes, and in consequence thereof Thos. H. Hollard, Thos. C. Rose, D. J. Carpenter, Wm. Marcum, Hiram Harrison, Geo. Abrams, Henry Hollard, Frank Hollard, Jno. Smith, Wm. Brockam, T. J. Coyle, Cal Coyle and Cefus Lovet, and many others, all of whom were male citizens of the United States, twenty-one years of age, who had resided in the State one year, and county six months and in the said precinct sixty days before said election, and who possessed none of the disqualifications mentioned and set forth in the Constitution and laws of this State.

45. That all the persons mentioned in this notice, in any of the cities of this Commonwealth, and who failed to vote for any of the reasons mentioned, had been duly and regularly registered as voters in the wards and precincts in which they offered or were ready to vote, at the regular registration preceding the November election, 1899.

46. Prior to the November election aforesaid, in the city of Louisville, a combination or conspiracy was entered into between the mayor of said city, W. B. Haldeman, the firemen and chief of the fire department, the chief of police and the police department, Lee Suter, the members of the board of safety, and others, and the contestant, by which qualified voters of said city who were opposed to contestant were to be intimidated and driven from the polls. That in pursuance of this conspiracy the firemen and policemen operated on the day of election with a large number of policemen especially appointed for such purpose, and the mayor of said city issued a proclamation in which he prohibited people from assembling at the polls. That on the day of election the said policemen, firemen, etc., attended every polling place in the city of Louis-

ville, and more or less were in and out of the booths, excluding officers of election from the same, intimidating voters and doing everything in their power to prevent a fair and honest expression by the people, by reason of which, and of the other matters hereinafter set out, ten thousand persons, citizens of the State of Kentucky, over twenty-one years of age, who had resided in the State more than twelve months, and in the county more than six months, and in the precinct more than sixty days before the day of election, and who had registered at the immediate preceding registration and were under no legal disability whatever, and who would have voted for this contestee and the republican ticket, were either alarmed and intimidated so that they did not attend the polls, or intimidated so after reaching the polls they returned to their several places of business or residences without voting, and in this wise and by reason of other matters stated, contestee was deprived of ten thousand votes, which he now asks may be counted for him.

47. That all the persons mentioned in the foregoing notice who offered to vote, or who were intimidated from voting or prevented therefrom in any way, or who were intimidated and prevented from registering, were over twenty-one years of age, at and before the days of registration and election in 1899.

48. That in the city of Louisville, in many of the precincts thereof, the most systematic delay was practiced by the democratic officers of election, which resulted in the prevention of many persons who were qualified to vote as aforesaid from voting. That in the Twelfth precinct of the Ninth ward the ballots were so mutilated by the democratic officers of election, who had the control of same, that only one vote was certified for contestee, and 176 for contestant; when, in truth and in fact the contestee obtained a majority of the votes cast. This precinct was thrown out by the county commissioners of the county in the election returns. That

on the day of the election the contestant, and those who were corruptly operating with him in the city of Louisville, had a large force of detectives at work, and in fact had them at work for ten days before the election, many of whom were thugs from the city of Chicago, and other places outside the State, for the purpose of laying plans to defraud, which they did do, the contestee, obtaining the vote to which he was entitled.

That in Precinct thirteen, Ninth ward, all the officers of election were democrats and partisan friends of contestant, and that in handling ballots, registration books, etc., they consumed a great portion of the time so that the voters of said precinct, in many instances, were unable to vote. In this precinct Capt. John Tulley, Assistant Chief of No. 3 Engine House, had several negro democrats at the polls for the purpose of intimidating, and who did intimidate other republican negro voters from voting by raising a personal difficulty with them, running in ahead of them when they undertook to reach the ballot box, and that by reason of all this conduct more than 100 voters, possessing the qualifications heretofore set out herein, were prevented from casting their votes, which they would have done for this contestee, and which votes he now asks shall be counted for him.

That on the afternoon of the day immediately preceding the day of the November election, 1899, the democratic election commissioners for said city and the county of Jefferson, in direct collusion and under the advice of contestant, removed eighty-seven election officers, theretofore appointed, and in their place appointed persons designated as republicans, but who were not republicans and who were in sympathy with and partisans of the said contestant, in order to prevent, and did thereby prevent, an honest and fair count of the votes, and the casting of an honest, fair and free ballot in the interest of this contestee. By reason of all which he lost in said city not less than one thousand votes, which

he now asks may be counted for him. That the clerk of the Jefferson County Court delayed as long as possible the distribution of the ballots, stencils, etc., so that all of the same were not placed in the basement of the courthouse until 4:30 o'clock P. M. on the 6th day of November, 1899. That there were only one set of clerks distributing the ballots, and that there was very great delay on account thereof, when Mr. Marshall requested that others should be put at work, which request was refused. Although nearly all the republican clerks were present ready to receive their election supplies by way of ballots, etc., between 7 and 8 o'clock A. M., the said county clerk allowed democratic clerks to come into the place of distribution by another passway and obtain their ballots quickly, and kept the republican clerks from coming in and obtaining their ballots, some having to remain until 6:30 o'clock P. M.

At the distribution of the ballots, Detectives Ross, Armstrong and Donahue, of the police force of the city, had charge of the distribution for the democrats. At the Sixth precinct of the First ward the regularly appointed republican clerk was removed at midnight of the day before the election, after he had received and signed for the ballots and taken the oath of office, of which fact he was notified by three members of the city fire department, who demanded, and carried away with them the ballots, stencils, instructions, etc., no sheriff or other officer accompanying them in any wise connected with said election. In this precinct the democratic officers of election refused admittance to the republican challenger, who was duly appointed, one B. F. Saurman, and admitted in his stead Henry Spats, a well-known democrat, who was selected by Dr. Smook, a democratic committeeman, and who had no authority whatever to act.

That in the Seventh precinct of the First ward democratic election officers, Clerk Brucker and Walter Sinkhorn, refused to count the vote after the polls were closed, and were

continually leaving the polling booth and conferring with policemen and firemen, who were standing about the same. After finally counting the vote at 10:13 o'clock on the night of the election, they refused to sign the certificate of the result, although the vote was announced at the door of the polling place, and no objection was made to the announcement. Neither the republican challenger nor republican inspectors were permitted to enter these polls. That by reason of these frauds and outrages this contestee was deprived of 100 votes which were really cast for him, and which he now asks shall be counted for him, in addition to the number of votes which were counted for him by the said officers, and that the result at this precinct, with this correction, shall be counted in this contest.

In Precinct No. 33 of the Third ward, J. Henry Kessler was regularly appointed as the republican judge, reported at the polling place, assisted in arranging the booths, but was not allowed to serve upon the presentation of his credentials, but that one, D. Walker, whose credentials consisted of a small piece of paper type-written with Walker's name inserted with pen and ink, and the name of Asher G. Caruth stamped thereon with a rubber stamp, was permitted to serve in his stead. Mr. Walker was not a republican. The credentials of the republican challengers regularly issued as hereinbefore stated in this notice, and properly prepared, and who was the duly authorized republican challenger, were repudiated by the democratic judges of election, and he was excluded from the polling place. At this precinct three policemen and three firemen from No. 14 engine company, took charge of the democratic interests on the outside, and permitted none but democrats to be at or near the booths, except such persons as were allowed to enter to vote. In Precinct No. 35 of the Second ward, Frank Scharre, who had regular credentials, as aforesaid, as republican inspector, was removed about five minutes before the polls opened, and in

his stead a democrat, who was unmarried, and not a householder, was substituted.

At the close of the polls at 4:00 o'clock P. M., two Goebel democratic inspectors were admitted, when Mr. Scharre forced himself into the booths, but was immediately and forcibly ejected by the police, because of his attempt ineffectually to prevent a fireman from burning the ballots before they were counted, which ballots had been voted for this contestee. Mr. Scharre was then again removed, and the count was proceeded with by the democratic officers, without republican molestation or inspection in any way, and the precinct was returned as having given a majority of more than fifty for the democratic ticket, when in truth and in fact it is one of the strong republican precincts in the city, never having been before returned except as giving a large republican majority; and in this way, and under these circumstances, the contestee alleges that he was robbed in this precinct of not less 185 votes, which had really been cast for him, and which he now asks may be counted for him. That in the Twenty-eighth precinct of the Tenth ward the democratic clerk was a resident of the First ward.

This was a large republican precinct, and as it was known that he could scarcely write his name, he was appointed by the democratic commissioners for the purpose of delaying the vote thereby, and in every other possible manner, in this way not less than 150 republicans, who would have voted for this contestee were delayed and prevented from voting, all of whom possessed the requirements as heretofore stated (concerning other republicans who were refused a vote) in this notice. And he now asks that their votes may be counted for him. In the Twenty-seventh precinct of the Tenth ward the vote was delayed on account of the refusal of the democratic sheriff of election to permit negro republicans to vote. There were two lines of voters, from the democratic line of which he insisted on calling voters. He was arrested a num-

ber of times during the day by legal process but immediately returned after being bailed out, and continued to pursue his illegal methods.

Finally it was so arranged that when he was arrested bail was given on the spot and he was not removed from the voting place. In this precinct 350 republican registered voters, properly registered, immediately preceding the November election, 1899, as required by law, who possessed all the qualifications of voters as heretofore stated herein, were prevented from voting, all of whom would have voted for this contestee, had they been allowed to do so, and whose votes he now asks may be counted for him. In the Twenty-ninth precinct of the Tenth ward the voting was greatly delayed by the democrat officers, the republican sheriff having been thrown out by one Harrison, a negro democratic voter, who had theretofore served one, certainly, and possibly two terms in the penitentiary, and who was appointed to act as a republican at that place when the democratic Commissioners knew he was a democrat. City firemen and policemen assisted said Harrison in every possible way, and every negro voter who offered to vote was challenged by said Harrison and required to bring two white witnesses to establish his residence and legal right to vote. In this way 150 republican voters, who were qualified to vote, as heretofore stated herein, and who had been duly registered as heretofore stated, all of whom would have voted for this contestee, were prevented from voting, and he now asks that said votes shall be counted for him.

The said Harrison is a professional gambler, and a man of no character whatever, and so known to be by the democratic election Commissioners when they appointed him as an officer of election. In Precinct Nos. 30 and 31 of the Tenth ward, the vote was delayed by reason of interference of the police and the willful and presistent obstruction of the negro republican vote. Their voting places were situated within a few

feet north and south of Engine House No. 13, and the city firemen were perniciously active in preventing republicans from voting. At Precinct No. 30, the republican officers were thrown out, and democratic officers put in their stead, one of them being a resident of Indiana. Under these circumstances 300 voters in these two precincts, possessed of all the qualifications aforesaid, duly registered as aforesaid, were refused the right to vote, all of whom would have voted for this contestee, and whose votes he now asks may be counted for him. The republican inspector was refused admission to the voting places in the Tenth ward until admitted by order of Court, and in nearly all of them before they were admitted the count had been completed, the ballots burned, and the greatest frauds practiced on this contestee.

In the Twentieth precinct of the Twelfth ward there were three democratic officers and one republican. The republican inspector, John Weber, was refused admission into this precinct, forced his way in, but was immediately ejected by Policeman William Borland. Two democratic captains of the fire department were admitted here as inspectors, and every questioned ballot was counted for the democratic ticket. So that in this precinct fifty republican voters, possessed of the qualifications aforesaid, duly registered as aforesaid, who would have voted, and a portion of whom did vote for contestee, were thrown out and not counted, and twenty-five democrats, not entitled, allowed to vote for contestant, and he now asks that their votes may be counted for him. In the Thirty-second precinct of the Twelfth ward there were three democratic officers and one republican officer, the other republican officer who was regularly appointed, was removed the night before the election. Republican inspector, William Dumire, who was duly appointed as aforesaid, was forcibly prevented from entering the polls.

In this precinct it was announced by Ben Gregory, an active partisan of the contestant, before the count was made,

that the precinct would be counted for Goeble or not at all, and this creature Gregory was admitted upon presenting credentials purporting to be signed by one Hambrick, which credential was a forgery, and which the said Hambrick had no authority to issue in any event. No returns were made from this precinct, when in truth and in fact this contestee obtained a majority of fifty therein which was not counted for him, and which he now asks may be counted for him. In the Thirty-third precinct no republican challenger or inspector was admitted; the two republican officers who had been appointed were removed on the night prior to the election, and in the precinct the democratic officers received and counted the ballots to suit their pleasure, in consequence of which this contestee was defrauded out of thirty votes illegally counted for contestant, which should be omitted and fifty votes which were really cast for him by qualified registered voters as aforesaid, which should be counted for him.

In the Thirtieth precinct of the Twelfth ward, the democratic clerk refused to open the polls until Mr. Clark, the aforesaid officer holding the proper certificate as aforesaid, was excluded from the room. In this precinct, the said clerk (Hopkins) had whiskey all day and frequently left the voting place to hold and did hold conferences with policemen, firemen and other democratic workers. At the close of the polls he refused to permit Dalson, the regularly appointed republican inspector to remain in the room, and called the police to eject him, and had him ejected, yet he gave permission to a fireman, named Alfred Stone, a democrat, who had no credentials of any character, to remain and assist, and he did assist in counting the vote. There was also present at the count James Bohon, a democratic city fireman. By reason of all these frauds this contestee was deprived of fifty votes cast for him by regularly qualified and registered voters as aforesaid, and which he now asks may be counted for him, and twenty-five votes were illegally

cast and counted for contestant, which he asks may be excluded.

In the Thirty-first precinct of the Twelfth ward, whiskey was frequently used inside and outside the voting booths by the democrats.

A republican election officer named Liebergrett was not permitted to serve, and LaBree, a democratic officer, appointed and served in his stead; and the republican inspector, duly appointed as aforesaid, was refused admission to witness the count, and I. Nowacki, a democrat, was admitted as a republican inspector. It was certified in this precinct that contestee had received eighty-three votes and contestant 189, when in truth and in fact the said precinct is and always has been republican by a large majority, and is and has been considered the banner republican precinct of the Eighteenth ward. The truth is, in this precinct the contestant did not receive as many as eighty-three votes, and that contestee did receive more than two hundred votes, all of which he now asks may be counted for him.

In the thirty-third precinct of the Twelfth ward, J. C. Dawes, duly appointed republican inspector, as aforesaid, was refused admission to witness the count, and Phil Young, who had what purported to be Hambrick credentials, apparently signed with a rubber stamp, which credentials were a forgery, and which credentials said Hambrick had no right to give, even had he given same, and who professed to be a republican, but was in reality a democrat, and a partisan of contestant, was admitted. Later in the day, by reason of the order of the Circuit Judge, Toney, said republican inspector Dawes was admitted into the booths, when all the ballots had been destroyed, and the democratic inspector was completing the making of a certificate. There was but one republican officer present at this count, and he was old and blind, so that he was totally incompetent—a fact well known to the democratic officers. In this precinct the contestee was robbed of fifty votes, which he now asks shall be counted for him.

In Precinct 34 of the Twelfth ward the regularly appointed republican election officer, C. Hoefling, was refused admission to the voting booth, and when he insisted upon his right to enter was arrested and taken to the station-house under the order of the democratic officers of said election by the partisan police, and William Rosenfield, a prominent democrat, was permitted, without authority, to serve in his place. The polls were not opened here until 9:30 o'clock A. M. After the polls were closed in this precinct William McCorkhill, an active partisan, friend and worker of contestant, was admitted to the voting booths on credentials purporting to have been given by the said Hambrick, the signature, however, being a forgery, and the said Hambrick having no authority to make the same, as a republican officer of election.

The first ten ballots counted resulted in eight votes for contestee and two for the contestant, thereupon the democratic officers refused to assist in the count or to allow the further counting of the vote. The republican sheriff then locked the ballot box, declining to go further until an agreement was made to count the vote. He went to the door of the booth to ask for assistance, when he was forced out of same, and the door was closed and locked behind him. After this was done, there being no republican present, the box was broken open and the count proceeded with, at the conclusion of which a certificate was given that contestant had received 186 and contestee only 89 votes. This was and is a republican precinct, and the said contestee carried same by a majority of at least 100, which he now asks may be counted for him.

In this precinct said Wm. McCorkhill acted as democratic challenger during the day and republican inspector at night after the polls were closed. In Precinct 38 of Ward 12, the ballots were burned as fast as counted, but the clerk's tally sheet showed eighty-six votes for contestee and 163 for con-

testant. This result not being to the entire satisfaction of the democratic clerk, he immediately proceeded and did transfer the figures so as to read sixty-three for contestant and eighty-four for contestee. The republican officers refused to sign this certificate, but the same was signed, and in this way the vote fraudently certified, and the contestee now asks that the same may be corrected and counted for him as first above counted by the officers of election.

49. That in Fayette county, including the city of Lexington, more than two thousand five hundred voters who would have voted for the contestee, were driven from or declined to attend the polls by reason of fraud, force, bribery, etc., as heretofore alleged.

50. That in the city of Louisville, money was corruptly used by contestant and those who were in corrupt collusion with him, by reason of which more than three thousand republican voters who were duly registered and qualified to vote as aforesaid, were hired and bought to remain away from the polls, or to go to the polls and cast mutilated ballots, or to leave the city, all of which votes contestee now asks shall be counted for him.

Wherefore, the contestee denying the jurisdiction of the Board to act herein, and not waiving his several motions, demurrers, etc., now asks, that in the event the contest is entered into as asked, that he be given the benefit of all the matters herein set up and relied on.

WILLIAM S. TAYLOR.

January 17, 1900.

EVIDENCE BEFORE CONTEST BOARD.

Charles P. Weaver, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. You may state, if you please, your name, age and residence?

A. Charles P. Weaver; 48 years of age, Louisville, Ky.

Q. How long have you been a resident of the city of Louisville?

A. All my life, continuously.

Q. Do you now hold any official position in that city?

A. Mayor.

Q. How long have you filled the position of Mayor of Louisville?

A. A little over two years.

Q. Last past?

A. November 7th.

Q. Two years from last November?

A. Yes, sir.

Q. Mr. Weaver, with a view of showing what acquaintance, if any, you have with Louisville, and the people of Louisville, will you tell the gentlemen of the Board what other positions, if any, you have held in our city?

A. I was an Alderman for six years; Postmaster under Cleveland three years and a half; at the present time Mayor.

Q. Are you acquainted with the people of the city of Louisville generally?

A. Yes, sir.

Q. Have you many, or few, personal acquaintances amongst the people of the city of Louisville?

A. Quite a large number.

Q. Are you acquainted with the general makeup of the population of the city of Louisville, and the disposition of her people generally?

A. Yes, sir.

Q. Where were you on the day of the last November election —November 7, 1899?

A. I was at the City Hall about six o'clock in the morning.

Q. Were you in the city of Louisville all that day, or only a portion of the day?

A. All of the day.

Q. Were you at home—I mean in the city of Louisville during a month or two months that just preceded the election?

A. Yes, sir.

Q. I will ask you as Mayor of the city of Louisville, whether there was on election day, November 7, 1899, any state of fact existing in your city, which made it necessary or proper, in your opinion, as the chief executive of the city, that the military should be called out in the city of Louisville?

Objected to.

Q. You may state, Mr. Mayor, if you please, the state of facts existing in the city of Louisville on November 7th, 1899, and prior to that time, with reference to the peace and order of the community, and as to whether there was any state of facts existing which indicated a riot, or indicated any interference with the authorities, or the people in their right to vote? Give all the facts on that subject as well as you can?

A. Well, on account of certain editorials in newspapers that were inflammatory, and certain public speakers, aided and abetted by quite a number of political heelers, created an impression upon the public mind of unrest—in the minds of a number of good citizens; but in my judgment there was no cause—absolutely none, because all preparations had been properly made for the protection of life and property of the citizens, and there was no need of any militia.

Q. I believe, Mr. Mayor, that as Mayor of the City of Louisville you are at the head of the Police Department ex-officio?

A. Yes, sir.

Q. Will you give the gentlemen of the two Boards an idea of what the city of Louisville had, at that time, in the way of police protection?

A. The City of Louisville had, at that time, 290 patrolmen—those are the regular police, in addition to the officers, numbered over three hundred and some odd. There were appointed by the Board of Public Safety about 275 extra policemen for special duty. I swore them in on the morning of November 7th. When I swore them in I told them—rather before I swore them in—

Objected to, overruled and exception.

A. I mentioned rather that if any of them expected to participate in that election, that they were very much mistaken; their duty would be simply to protect life and property, and not to interfere with the election; they would be taken charge of by the Chief of Police, who would assign them to the different Captains, and who would send them to the different Station Houses, there to remain, only to go and vote, and to return. After asking them if they were all citizens of Louisville, I swore them in and turned them over to the Chief of Police, and the Board of Safety.

Q. What was done with the extra police in addition to your regular force, that was sworn in that day?

A. They were sent to the Station Houses, and there remained.

Q. Were they used or utilized, in any way, on election day?

A. No, sir.

Q. Where were they put or kept during election day?

A. At the different Station Houses.

Q. I will ask you whether the regular force of police, composed of the three hundred and odd members as you have stated, were uniformed and equipped for service?

A. They were.

Q. Mr. Mayor, will you state to the gentlemen of the Board, I don't know whether they are aware of that, what system of policing they have in the City of Louisville; I mean, as to whether you have the Metropolitan system?

A. We have the Metropolitan system.

Q. And will you explain what that means, so that the gentlemen of the Board, who are not familiar with it, may understand it?

A. That means that we have a police force regularly drilled and regularly equipped, properly officered and so forth.

Q. Are those policemen appointed for any length of time, or are they subject to the will of anybody?

A. For good behavior.

Q. During good behavior?

A. Yes, sir.

Q. I will ask you if a policeman is appointed under any administration, of whatever politics it may be, whether he can be put out as long as he attends to his business, under the law as it exists?

A. No, sir; he is given trial and if found guilty it is in the discretion of the Board to remove him, which they generally do; or innocent, they do not, but not for political purposes.

Q. Mr. Mayor, prior to the 1st of November, 1899, was there any armory, or any existing militia, in the city of Louisville?

A. Prior to what date?

Q. Well, about the 1st of November; if I am not accurate about the date, you may correct me about it.

A. Well, there was a Legion organized, but there was no armory.

Q. When was the Legion organized, if you remember?

A. Well, I could not say; there was some trouble about the organization of this new Legion, that is, since the return of the military from Puerto Rica, through the County Attorney—County Judge and the Governor, and I cannot remember exactly the date, but I think it was about two months previous—

Q. To the election?

A. To November.

Q. At that time, whatever that exact date was, there was no militia in Louisville at all, no Legion?

A. No, sir.

Q. At the time of the organization of this new Legion, can you tell under whose order it was organized?

A. I think it was under the order of the Governor.

Q. Is that His Excellency, Gov. Bradley?

A. Governor Bradley.

Q. That was approximately some two months before the election?

A. Yes, sir.

Q. Now, was there, at the time this new militia was organized by the Governor, in the city of Louisville, any armory—in the city of Louisville, or in the county of Jefferson?

A. No, sir.

Q. Was there any place provided or set apart for a Legion, or for an armory?

A. Not by the City.

Q. What was the state of affairs in the city of Louisville on the subject of an armory, up to a short time before the election?

A. Well, I recommended in a message to the Council the appropriation of the money for an armory, and, in fact, a large number of the citizens wanted an armory.

Q. At the time of the election had any final action been taken, or had one been provided at that time?

A. No; but a resolution had been adopted authorizing me to purchase ground for an armory.

Q. Did you then have that matter under advisement?

A. I did.

Q. Was any temporary place obtained or provided for this new Legion that was organized at the time and in the manner you have told?

A. There was one obtained a short time previous to the election.

Q. Can you give an idea, if you please, of about how many days previous to the 7th of November, 1899, that armory—temporary armory was obtained?

A. To the best of my recollection it was about a week—four or five days, something like that.

Q. Was that obtained by the civil authorities in your city and county?

A. No, sir.

Q. Do you know who did obtain it?

A. No, sir.

Q. Were you consulted about the matter at all?

A. No, not relative to that particular place.

Q. You have said that you then had under advisement, as an official, the purchasing of ground and the building of an armory?

A. Yes, sir.

Q. But I speak especially now of this temporary place that was gotten about a week before the election; were you advised with or consulted on that subject?

A. No, sir.

Q. Will you tell the gentlemen of the Commission where these temporary quarters were obtained, that were gotten a few days before the election?

A. On Main street, between Sixth and Seventh, north side.

Q. What district of the city is that; I mean, is that a residence, or wholesale, or retail district?

A. In a wholesale district.

Q. What portion of the city is that as to the eastern or western limits—about what portion?

A. About the central.

Q. What kind of a place was obtained, by whoever did obtain it, for this purpose?

A. It was a vacant wholesale house, of four or five stories.

Q. Can you tell the Commission how many stories?

A. Of four or five stories.

Q. Is that about opposite the Louisville Hotel, in order that the location may be fixed?

A. Yes, sir.

Q. On that same block, on the other side of the street?

A. Yes, sir.

Q. Mr. Mayor, I will ask you whether or not the militia that had been organized at the time you mention, was called together at any time at or about the election day?

A. Well, I really could not answer that question.

Q. I will ask you whether you saw published the official call?

A. Yes, sir; I saw a statement in the papers to the effect.

Q. Did you see the building at the time, or thereafter, that was set apart for the soldiers?

A. No, I didn't make an inspection of it.

Q. I will ask you whether the City of Louisville, or any of the civil authorities of the City of Louisville, had anything to do with the renting, or the paying of the rent for that building that was thus obtained and set apart for this purpose?

A. No, sir.

Q. Were they called on to do so by anybody?

A. No, sir.

Q. Mr. Mayor, referring especially to the election day, November 7th, 1899, I will ask you, speaking from a comparative standpoint with the other elections in Louisville, how it was as to peace and order, or otherwise?

A. It was very peaceful.

Q. I will ask you whether at any time before that day, or on that day, there was anything occurred in the city of Louisville, to indicate, or to give rise to the fear that there would be any

uprising that the civil authorities of the City of Louisville could not handle?

A. No, sir.

Q. I will ask you, as the Chief Executive of the City of Louisville, whether, when the militia was called out, they were placed under your charge, or you were notified to take charge of them?

A. They were not.

Q. Do you know who the colonel or man in charge of this militia in Louisville was?

A. Yes, sir.

Q. What is his name?

A. Col. Mengel.

Q. Charles C. Mengel?

A. Charles C. Mengel, Jr.

Q. Can you tell the gentlemen of the Board what his party affiliations are?

A. He is a Republican.

Q. Did you call on him prior to the election day, or on the election day, touching the subject of the militia, and have any talk with him?

A. No, I didn't call on him, but I met him on the corner of Fourth and Main three or four evenings prior to the election, and I asked him (Col. Mengel) that in case the militia were ordered out who would he report to?

Objected to, overruled and exception.

Q. Mr. Mayor, you have the permission of the Board to answer?

A. I asked him in case the militia were ordered out, who would he report to? He said that he would be subject to the orders of the Governor. I told him that I thought he would make a mistake; as I understood the law that the militia was subordinate to the civil authorities, and that it would be his duty to report to me as Mayor, or to the Jailer, or to the Sheriff of the county, and the other civil authority that is named—of course, in the State is the Bailiff—we not having a Bailiff, he would have to report to one of us three, as I understood the law. That was the subject of our conversation on that evening.

Q. Did he, or did anyone, acting for him, ever report to you in accordance with that law, for you to take charge of the militia?

A. No, sir.

Q. I will ask you whether you, or any of the civil authorities of the city of Louisville, so far as you know, made any request of the Governor to call out the militia?

A. We did not.

Q. I will ask you whether there was any need of the militia for the protection of the people?

Objected to.

A. There was none.

Q. Now, Mr. Mayor, can you tell these gentlemen of the Commission where His Excellency, Governor Bradley, was on election day?

A. I can only state from hearsay, that he was at the Galt House.

Q. Was it announced in the public prints?

A. Yes, sir.

Q. What effect, if any, did the calling out of the militia of the city of Louisville, in your opinion, as the Chief Executive, have upon the people, and the voters of the city of Louisville on election day?

A. Well, it had a *dampening* effect upon the timid, that they did not care, a great many of them, to express, but it had the effect of intimidation—

Objected to and overruled.

A. That is my opinion.

Q. Will you tell the gentlemen of the Commission how this was manifested?

A. Well, I had a direct conversation on that particular subject with a gentleman who has a pretty good idea as to the feelings of our German citizens—

Objected to.

Q. Well then, I will ask you, without stating the conversation, as the gentlemen object to that, whether you had information that led you to know what you have just stated about the intimidation?

A. Well, *they* had been talking about "Bloody Monday," and going to have riots, and things of that kind, on election day; and that they were going to burn buildings, and that they were going to take me out and hang me, and going to hang the Board of Safety members, and in fact, all Democrats who were working in the interest of the Democratic party.

Q. I will ask you whether publications to that effect were made, and if so, can you tell us in what papers?

Objected to, overruled and exception.

A. Well, I read so many statements of that kind in the different papers, that were antagonistic to the Democratic party, that I could not name the papers, or the articles that referred to that particular subject.

Q. I do not mean to give the date of the publications, but can you give us the name of the papers?

A. Well, the Post, and the Dispatch, and the Free Press, I believe is the name of the paper, the arcticles were in.

Q. Now, Mr. Mayor, what, if anything, was done by you, as Mayor of the City of Louisville, in the direction of giving assurances to the people of the city of Louisville as to what the city authorities would do on election day, on that matter of protecting the people?

A. Well, the first assurance that I gave them was while I was at the Honest Election League meeting held at the Board of Trade, in a little address made to the gentlemen assembled. I told them that they could rely upon the fact that the law would be enforced by the police. I afterwards gave an interview to the Evening Times, wherein I called the attention of the citizens of Louisville, that every citizen would be given the right of suffrage, and without interference on the part of the police.

Q. I will ask you, referring to the public meeting of the citizens, about how long before the election that was held, if you can state?

A. I can not state positively, but I believe that that was about a month—I think it was a month previous to the election.

Q. Were any other assurances given to the people at this public meeting on that subject, by any other public authorities?

A. By Mr. Lyons, the Chairman of the Board of Public Safety, by Mr. Suter, a member; by Mr. Tierney, the other member; by the Chief of Police; by the Sheriff, Mr. Henry Bell; and that was all of them.

Q. Henry Bell, you mean the Sheriff of our county?

A. Yes, sir.

Q. I will ask you if it is not a fact that at that public meeting, all of the public authorities, including yourself, the Chief of Police, and the Sheriff, and the members of the Board of Safety, gave a public pledge that they would give to the people—all, a free and full opportunity to cast their vote as they chose?

A. Yes, sir.

Objected to as leading.

By the Chairman: That is leading, that is a fact.

Q. Mr. Mayor, what, if anything, did yourself and the Chief of Police do in the direction of carrying out this pledge that you made to the people on that subject?

A. I took the matter up with the Board of Public Safety, and I told them that I wanted them to issue orders coming from the Board to the Chief of Police, to see that the laws were strictly enforced, and that those promises be carried out to the letter, which was done.

Q. Do you know whether the Board of Safety acted upon your request?

A. Yes, sir.

Q. What action did they take, or what did they do along that line?

A. They took the matter up with the Chief of Police, and issued orders to that effect.

Q. Do you know what, if anything, your Chief of Police did on that subject?

A. He carried out, to my knowledge, the orders given him.

Q. Were those promises that you have alleged were made—were those efforts made in good faith, or in bad faith, or how were they carried out?

A. In good faith.

Q. I will ask you whether there was ever, at any time, any intention or effort on the part of yourself, of any of the public authorities, to in any wise interfere with the free suffrage of any citizen of Louisville?

Objected to on the ground that this gentleman has no divine power of knowing what the intention of anybody else was but himself; he might possibly know what his own intention was, he may recollect now what that intention was.

Q. Will you state then what your purpose and intention was about it; will you state your own intention and purpose?

A. It was to carry it out faithfully.

Q. Did you see, or hear, at any time, on the part of any officials of the city, indicating any diverse intention on the part of any of them?

A. I did not. Excuse me, I would like to make this statement relative to the renting of an armory, that Mr. Mengel, the Colonel of the regiment, and Mr. Buckner, the Superintendent of the Board of Trade, called on me for the purpose of renting a temporary armory at least for a month or maybe a little bit longer than that prior to the election, but I had this matter up for a permanent armory, and advised them of it, and thought that if the Council would rent a temporary armory it would interfere with the permanent armory, as I wanted a permanent home for the legion, which promise was made to them on their return from Puerto Rica.

Q. I neglected to ask you, I had forgotten it—I will ask you whether prior to the election, and if so, about how long prior, you issued any proclamation to the citizens of Louisville?

A. On the Sunday prior to the election.

Q. What was the purpose or purport of that?

A. It was for the purpose—

Objected to.

Q. Have you the proclamation?

A. Yes, sir.

By Mr. Phelps: I would like to have that read to the Board.

By the Chairman: Very well.

By Mr. Phelps: The headline is "THREATENED BLOODSHED."

By Mr. Sweeny: Was the headline a part of the proclamation?

By Mr. Phelps: I don't know.

By the Chairman: Just omit reading the headline.

"*To the Citizens of Louisville:* By virtue of the power vested in me as chief executive of this city, having in charge the good

name, peace and order of the city, I now make this proclamation:

"It having been openly declared by certain designing persons that on Tuesday next there would be riot and bloodshed in our fair city, and such designing persons having created unjustly in the minds of some of our good citizens the fear that there would be an attempt to defeat the true ballot of the citizens, and by force, violence or intimidation interfere with the lawful rights of citizenship.

And, whereas, threats of assemblies of armed men have been openly proclaimed to be in readiness on said day to carry out the unlawful and unholy purpose of interfering with the legally constituted authorities of the city, and believing that perhaps, from the invidious insinuations of partisans, danger exists to the good name of our city, I now declare that I will, with all the power vested in me as chief executive, preserve the good name and the good order of our city, and the laws of our State; that no person in authority shall interfere with the legal rights of voters, and that there shall be a free ballot and a fair count, and that every officer of election shall be protected in making a proper and honest return of the election, and to this end I shall devote all my energies. I also declare that unlawful assemblies of all kinds that is, the assemblage of persons at the polls will not be tolerated; that the carrying of weapons and every act of intimidation will be immediately followed by arrest and imprisonment of the persons guilty, and that at all hazards good order must and shall be maintained; and to that end I will exercise to the fullest degree the authority vested in me by law as Mayor of this city, essential to the carrying out of the purposes of this proclamation. I earnestly call upon all good citizens of this city to aid me in the discharge of this, my duty, promising them that there shall be no dereliction upon the part of any official in order to prevent any violence or intimidation or disorder of any kind. There is no cause for apprehension if the laws of the State and city and the constituted authorities are properly respected.

I further declare that all corruption at the polls, bribery of voters or attempted bribery of election officers, and every other violation of the election law shall be punished, and the persons immediately arrested according to law. Let the laws of the State and our fair city be enforced, as this furnishes the only safeguard to our rights, the rights of our people.

Given under my hand, as Mayor and chief executive of the City of Louisville, this the 4th day of November, 1899.

CHARLES P. WEAVER MAYOR."

Q. What day was that published to the world, that prclamation?

A. I think it was the fourth—it was Sunday.

Q. On Sunday?

A. On Sunday morning; the election was Tuesday.

Q. Where were you on election day, Mr. Mayor?

A. I was at the City Hall part of the time; and upon the advice of some of my friends, I got in a coupe and visited almost every precinct in the city, in fact, all that I could reach, for the purpose of seeing whether it was a peaceful election, or not, and I am prepared to say that it was one of the quietest and most peaceful elections ever held in the city of Louisville.

Q. Mr. Mayor, that publication, or proclamation, going to the people on the 5th, how soon after that was it that Governor Bradley called out the militia?

A. I can not name the date; I don't remember.

Q. Well, Sunday was the 5th, Monday the 6th, and the election day was the 7th?

A. I could not state positively; I don't remember.

Q. Were you at or about the polls when the militia was called out?

A. No, I was not.

Cross examined by Mr. Sweeny.

Q. Mr. Mayor, when were you elected Mayor of the City of Louisville?

A. Two years—a little over two years ago.

Q. In 1897?

A. I think it was 1897.

Q. At that election on the 8th day of November, 1897, will you please state to the gentlemen of the committee whether or not the militia were assembled at the armory in the city of Louisville?

A. I can not answer that question.

By Mr. Scott. Hold on.

By Mr. Sweeny. Do I understand the gentlemen object to that question?

By Mr. Kohn. Is that this election you are talking about, or some other election?

By Mr. Sweeny. The question I asked him was whether or not he could remember as to whether the militia, at the election on the 8th day of November, 1897, were assembled at the armory in the city of Louisville, at the election at which, as I understand, he was elected Mayor of the city of Louisville or proclaimed to be the Mayor?

By Mr. Kohn. To save time, let him answer, go on.

A. I could not answer.

Q. (Mr. Sweeny resumes) You don't know about that?

A. No, sir; I wasn't thinking about militia at that time.

Q. What did the newspapers say?

A. I don't remember what the newspapers said.

Q. About the militia being called out upon that day?

A. I don't remember.

Q. Col. Castleman then, if I am not mistaken, was the Colonel of the old Louisville Legion, was he not, at that time?

A. Yes, sir.

Q. Do you know anything about any correspondence that he had with Governor Bradley, either by telegraph or by letter, in reference to the calling out of the militia upon that day?

A. No, I do not.

Q. This proclamation which you have filed and made a part of your deposition here, was, as I understand you, published upon Sunday previous to the day of the election, the recent election?

A. Yes, sir.

Q. I will ask you, Mr. Mayor, who wrote that proclamation?

A. Well, that was the production of several different persons, I might say. That was written, in the main, by myself; it was after a conference with friends.

Q. Whom were those friends?

A. Well, there were quite a number; the Board of Safety, the Chief of Police, and several others.

Q. Well, who were the several others; give us all that you can think of.

A. Mr. Bell was one.

Q. Mr. Bell?

A. Henry Bell.

Q. The Sheriff of the county?

A. Yes, sir.

Q. Who else?

A. And Mr. Phelps.

Q. Mr. Zach Phelps?

A. Yes, sir.

Q. Who else?

A. I really don't remember any more.

Q. Was Mr. Kohn present?

A. No, he was not present.

Q. Mr. Bill Haldeman present?

A. No.

Q. Mr. Lee Suter present?

A. Suter?

Q. Suter?

A. He is a member of the Board; I mentioned the Board of Safety.

Q. It was written where?

A. In my office.

Q. These gentlemen whom you have mentioned, what was their political affiliations?

A. Well they were Democrats, and are Democrats.

Q. Who were they for for Governor?

A. They were for the Democratic nominee.

Q. Which one?

A. There is but one.

Q. Well, you mean Mr. Goebel?

A. The ticket that Mr. Goebel headed—yes, sir.

Q. Well now, I will ask you in that connection if you, Mr. Mayor—of course, I don't mean, to be offensive, or anything of that kind?

A. Certainly.

Q. Don't so understand it, but I will ask you if you were not a very active and zealous partisan upon the part and in behalf of Mr. Goebel's candidacy, both for the nomination and for his election?

A. Yes, sir.

Q. Was not also Mr. Zach Phelps?

A. Yes, sir.

Q. Was not also Mr. Kohn?

A. Yes, sir.

Q. Was not also Mr. Lee Suter?

A. Yes, sir.

Q. Was not also every member of the police force in the city of Louisville, so far as your knowledge goes?

A. To be very candid with you, I never consulted with a policeman on the force relative to whether he was for or against him.

Q. Was not every fireman in the city of Louisville?

A. I could not say.

Q. Was not every street sweeper in the city of Louisville?

A. Are you speaking, for the nomination?

Q. Yes, and for his election too?

A. For his election?

Q. Yes, sir?

A. They all should have been, if they were not; because they were all holding office under Democrats.

Q. Why should they have been?

A. Because they were Democratic office holders.

Q. Street sweepers?

A. Yes, sir.

Q. Do you, in the city of Louisville, even limit—bring politics into the employment of street sweepers?

Objected to and overruled.

Q. Mr. Bell is the Sheriff of your county?

A. Yes, sir.

Q. Was he the chairman of any of the campaign committees?

A. Yes, sir.

Q. Of what committee?

A. Of the Democratic Campaign Committee.

Q. For the city or county?

A. City and county too, I believe; I am not positive, but I think it was city and county.

Q. He was an active supporter of what you choose to denominate, to save trouble and time, as the Goebel Democratic ticket?

A. Yes, sir.

Q. If you had wanted to communicate with the Jailor of your county upon that day, where would you have sent to have found him, Mr. Mayor?

A. To the jail.

Q. Do you know where he was that day?

A. No, I do not.

Q. Do you know whether he was at the jail or not?

A. No, I don't know that.

Q. Do you know where your Chief of Police was?

A. He was supposed to be at the City Hall, the same as the Jailor was, at his place of business; in fact, when I left the City Hall, I left the Chief of Police there.

Q. You have stated that you swore in two hundred and fifty-odd, I believe—275 extra police; will you please state to the gentlemen of the committee whether or not it was not the first time, within your knowledge, and since you have been Mayor, that extra policemen were sworn in?

A. Just since I have been Mayor?

Q. Yes, sir; put it that way if you want to.

A. That is the first time since I have been Mayor.

Q. Do you know when extra policemen were ever sworn in previous to the time that yon were Mayor, upon the day of an election?

A. I have been told that they were sworn in before, when Booker Reed was Mayor and John Whallen Chief of Police.

Q. You were told that?

A. Yes, sir; and that can be settled.

Q. The day that you were elected Mayor, or the day that you made the race for Mayor in the City of Louisville, were extra policemen sworn in upon that day?

A. Not that I know of.

Q. Did you know those extra police that were sworn in?

A. I knew some of them, but not all of them.

Q. Who selected those extra policemen?

A. To my knowledge, the Board of Safety, who appointed them.

Q. Who composed the Board of Safety in the city of Louisville?

A. Mr. W. L. Lyons, R. Lee Suter, and Edward T. Tierney.

Q. Anyone else?

A. No, sir.

Q. Isn't there some other Board that acts in conjunction with them?

A. No, sir.

Q. Did you know these extra policemen?

A. As I said, I only knew a few of them; I didn't know them all.

Q. Were they uniformed?

A. No, sir.

Q. Were they armed or equipped in any way?

A. Well, I could not state that.

Q. I believe you have stated that they were not uniformed?

A. Yes, sir.

Q. Who selected, as a matter of fact—do you know, of your own personal knowledge that the Board of Safety selected those extra policemen?

A. I could not state that.

Q. You could not state that?

A. No, sir.

Q. Who furnished you the names?

A. The Board of Public Safety.

Q. In whose handwriting was the list of names furnished to you?

A. I believe it was in typewriting.

Q. It was typewritten?

A. I think so.

Q. Were there any ex-convicts upon the extra police force?

A. I don't know it if there were.

Q. Were there any firemen upon the extra police force under assumed names?

A. Not that I know of.

Q. You have stated to the gentlemen of the committee, Mr. Mayor, that in your judgment the ordering out of the militia had a tendency to prevent people from attending the election and casting their ballots; will you please to be kind enough to give to this committee the name of a single, solitary, legal, qualified, registered voter, of your city who did not go to the election and vote upon the rumored presence of the militia in that city?

A. I can not.

Q. I will ask you the converse of that proposition, if as a matter of fact, it is not equally true, that the presence—that the knowledge of the presence, if such a knowledge existed, of the militia in a city, for the purpose of preserving the peace and quietude upon the day of election wouldn't have a tendency to induce timid people to come to the polls to vote who would not otherwise have done so?

A. No, sir.

Q. Is the police force in the city of Louisville subject to your orders?

A. Only in time of apprehended danger, riot, etc.

Q. Upon the day of election, whose orders are the policemen subject to?

A. The Board of Public Safety.

Q. Who gave to the policemen in the month of June of the last past year the order to go to the voting precincts throughout the

city of Louisville, and take charge of the ballot boxes and break up the election?

A. I did not give any such order, and I do not believe the Board of Public Safety ever gave any such order.

Q. Then the police force of the city of Louisville acted, if they did act in that way, without authority?

A. Yes, sir, and that was not an election; that was a primary not under the law.

Q. Who was the judge as to whether it was called under the law or not?

A. Well, almost anybody would be a judge of that.

Q. The city of Louisville extends over quite a good space of territory, does it not?

A. Yes, sir.

Q. Do you know how many voting precincts there are in the city of Louisville?

A. No, sir, I couldn't tell you exactly how many.

Q. There are over 290, are there not?

A. I could not.

Q. Then I would ask you this question, if the police force of the city of Louisville—the regular force I mean—was distributed all over the city at the various voting precincts, and a mob of some two or three thousand angry citizens had assembled, would it have been possible for the Chief of Police, or the person under whom the police were acting, to have gotten a sufficient number of the police force together in time to contend with a mob of that kind?

A. Yes, sir.

Q. How long would it have taken?

A. That would be pretty hard for me to say exactly how long, but before the mob could reach any stated point, the Chief of Police would have notified them, through his different Lieutenants and Captains, and they would be brought immediately to the central station.

Q. Did you apprehend any danger upon the day of election?

A. To be very candid with you, I did not.

Q. I do not mean to you personally?

A. Not to me personally, nor I did not to the city of Louisville.

Q. Then will you please state to this committee why it was that you issued the proclamation that you did issue?

A. On account of the incendiary speeches and inflammatory articles that had been published in the newspapers, trying to create that impression upon the timid citizens of Louisville.

Q. Although you didn't believe anything of the kind?

A. I did not.

Q. I will ask you, as an official, the highest official of the city of Louisville, do you base your official acts upon newspaper articles?

A. No, sir.

Q. Now I would like to ask you this question, if as a matter of fact you, as the Mayor of the city of Louisville, and the Sheriff of your county, and the Chairman of the Goebel Democratic Campaign Committee, and the Jailer, taking an active part upon election day and visiting the various precincts, and the other civil officers of your city and county, had consorted together and entered into a conspiracy for the purpose of breaking up the election, and preventing the citizens of that city from having their ballots cast —counted as they were cast, wouldn't you, admitting that state of facts to be true, consider it necessary to have had the military present?

A. That is not a supposable case.

Q. I am asking you if as a matter of fact that was true, I have a right to assume it is true—

A. That could not be true.

Q. I don't know about that; that is what we want to find out. But I say as a matter of fact if that was true, I don't say it was true, but if that was true, wasn't the presence of the military then necessary?

A. No, sir.

Q. What did the people have to protect them in the event that the police force and all the civil authorities had combined against them?

A. They weren't combined, though.

Q. I am assuming it to be true that they were, though?

A. The police force was amply sufficient.

Q. Then why did you swear in an extra police force?

A. That was included with the police—that was considered the police force.

Q. Wasn't the other police sufficient?

A. I didn't think so.

Q. Why, if you apprehended no danger?

A. No, as I told you, it was a precautionary matter. I had been told that the Mayor of Louisville at the time of "Bloody Monday" was not prepared, and in time of peace prepare for war; so I concluded it was best to increase the regular police force to that number, and if the regular police force and the extra police force combined had not been sufficient to maintain peace and order, I would not have hesitated to call on the Governor for militia.

Q. Where were you the night previous to the election?

A. At home.

Q. Do you know who furnished the list of election officers to the Election Commission—the new list, I mean, that was substituted for officers that had been appointed previous to that time in the city of Louisville?

A. No, sir.

Q. Some eighty-odd names?

A. I don't know anything about that.

Q. You have no personal knowledge about it at all?

A. No personal knowledge of it at all.

Q. Don't know when it was done?

A. No, sir.

Q. Nor where it was done?

A. No, sir.

Q. Did you see any soldiers upon the streets of Louisville the day of election?

A. I did not.

Q. Do you know what time—if the militia was ordered out at all—what time they left the armory?

A. No, sir, because, as I told you, I was going around the city of Louisville looking after the various voting places to see whether order was maintained or not.

Q. You saw no soldiers at all?

A. No, sir.

Q. You went, as I understand, all over the city?

A. As far as I could go.

Q. What time of day was that?

A. I left the City Hall about 11 o'clock.

Q. What time did you return?

A. About half-past 4.

Q. You saw no soldiers?

A. No.

Q. On the streets at all?

A. No, sir.

Q. Saw no disorder?

A. No.

Q. No disturbance?

A. No, sir.

Q. Nothing of the kind?

A. Nothing.

Q. The polls closed at 4 o'clock, did they not?

A. At 4 o'clock.

Q. I understood you to say that it was one of the most peaceful, quiet elections ever held in the city of Louisville?

A. Yes, sir.

Q. Although a good many people, as you have stated, did anticipate, as they usually do following a hot political contest, some trouble and excitement, upon the day of the election?

A. Yes, sir.

Q. Do you know whether or not it was the universal custom and has been for years past to assemble a guard always at the State armory—at the city armory—upon the day of election?

A. I have understood that a detail was placed there.

Q. I understood you to say you didn't know about any particular number of troops in 1897.

A. Not at this particular election that you referred to, I did not.

Q. You speak of the old armory. The old Legion, under the command of Col. Castleman, had an armory, did it not?

A. Yes, sir.

Q. When that regiment was mustered into the regular United States service, the armory was abandoned?

A. Yes, sir.

Q. Don't you know that the officers of this new regiment that had been organized had been making efforts for some three or four months prior to the election to secure an armory for the purpose of drilling and storing away the equipments necessary for the equipment of a regiment?

A. After the regiment was formed, they made efforts to get a temporary quarter, for an armory.

Q. Wasn't that regiment formed—organized three months prior to the election?

A. I can't state, I don't remember the date.

Q. It is composed of citizens of Louisville, is it not?

A. Yes, sir.

Q. Young men and older men. As to the payment, do you know how that armory was paid for?

A. I do not.

Q. As a matter of fact, I will ask you, to refresh your recollection, if that armory is not paid for by funds contributed by honorary members of the Louisville Legion—or members of the regiment who pay so much by the year for the mere pleasure of being honorary members of the Legion?

A. You mean the present armory?

Q. Yes?

A. I don't know.

Q. How long would it have taken you to have bought the ground and built an armory there?

A. I have been trying to do it ever since they made the request, and the resolution passed the General Council, and I haven't bought it yet.

Q. How long ago was that?

A. That has been at least sixty days; may be longer.

Q. Isn't it longer than that?

A. I wouldn't be surprised but what it is; there is a good deal of competition there with real estate men as to selling ground.

Q. Wasn't it two or three months prior to the election?

A. I can't remember the date that the resolution was passed. I can furnish that to you, though.

Q. Wasn't it as much as two months?

A. I couldn't tell you the date, I wouldn't like to say; I can give it to you positively later on.

Q. I would like to ask you this additional question. Did you, as a friend and supporter of the Goebel ticket, in connection with Mr. Lee Suter, Mr. Zach Phelps, Mr. Aaron Kohn, Mr. Will Haldeman, or any of those gentlemen, hold any consultation as to the best measures—best steps that you should take as Mayor for the purpose of advancing the interests of the Goebel ticket in the city of Louisville?

A. No, sir.

Q. You did not?

A. I did not.

Q. I will ask you do you know anything about any money being contributed or having been contributed by yourself, or any other civil officers, either of the city or county, for the purpose of buying votes, or to the campaign fund—the Goebel campaign fund?

A. I do not.

Q. Do you know of any levy having been made upon the city officials, or any other officials, or any demand upon them, by any person for any sum, for the purpose of creating a campaign fund for the Goebel campaign fund in the city of Louisville?

A. I do not.

Q. Did you yourself contribute anything?

A. I did not. I have been prepared for this.

Q. I will ask you the question, if you contributed any money directly or indirectly?

A. I did not.

Q. Then you were not much interested in the Goebel campaign?

A. I will be very candid with you. I don't suppose that many of them gave more money to the cause of democracy than I did; but I did not give any in this campaign.

Re-direct examination by Mr. Zach Phelps, for the contestant:

Q. You were asked about the former armory that used to be in Louisville; who paid the rent of that armory?

A. The City of Louisville.

Q. You stated that the City of Louisville had noting to do with the one they got just before the election?

A. They did not.

Q. You spoke of certain incendiary speeches that were made just before the election; who were they made by?

A. By Mr. Denny.

Q. George Denny. Of what party was he speaking for?

Mr. Breckenridge: Did he profess to have heard them?

A. I did not.

Objected to.

Mr. Phelps: Did you read the speeches?

A. I read it in the papers, yes, sir.

Q. Do you know whether Governor Bradley was at that meeting?

A. I do not.

Objection sustained as to testimony relative to Denny.

Q. Do you know whether Governor Bradley was present at that same meeting?

Objected to.

A. I don't know of my own knowledge.

Q. There has been a good deal said in a speech that my friend made across the way, about a conspiracy that existed in the city of Louisville amongst the officers; did you have any part or parcel in any such conspiracy?

A. I did not.

Q. Was there any such conspiracy existing amongst the officers or officials so far as you know?

A. There was not.

Q. Did you, directly or indirectly, participate in or take any part in such a conspiracy?

A. No, sir.

Q. You were asked something about the election in June, 1899. I will ask you whether there was any election held at that time?

A. There was not.

Q. Something was said about a primary. I will ask you whether any efforts were made to get it held under the law so there could be police protection?

A. Yes, sir.

Q. Will you tell the gentlemen of the Board what was done in that direction?

Question objected to; objection sustained.

Harry P. McDonald, being duly sworn, and examined by Mr. Scott, attorney for the contestant, deposed as follows:

Q. You state to the Board if you are a citizen and a resident of the city of Louisville?

A. I am.

Q. Were you an officer of election on the 7th day of November last?

A. I was a challenger, and afterwards an inspector.

Q. In what precinct and ward?

A. In the 18th precinct of the 9th ward.

Q. For what party were you acting as inspector or challenger?

A. For the Democratic party.

Q. Did you see an inspector there whose name was McGlinn?

A. I saw a man who I was told was named McGlinn.

Q. Was he an officer of that election?

A. He was afterwards an inspector, after the votes had been cast.

Q. For what party?

A. For the Brown party.

Q. Tell the Board whether or not he was forced into that poll by the order of Judge Toney?

A. He came into the poll by order of Judge Toney without objection.

Q. Did he bring the order?

A. Yes, sir, he held the order, and the police officer consulted with me as to what his conduct about it should be. I advised him that under a Court's order he ran a grave risk if he refused to admit him, and advised him to admit him.

Q. Did you see a gentleman there by the name of Knoefel?

A. Yes, sir, I did.

Q. Was he an officer in that election?

A. He was a challenger for the Republicans.

Q. If Mr. Knoefel made any threats against the other officers there, as to United States Deputy Marshals, state what he did?

A. He made no threats against any person. He cautioned me in these words: that I had better look out, he was an United States Marshal. That came up as a result of a conversation over the challenging of a large number of negroes who were voting illegally in my judgment from a negro school which was in the neighborhood. But not at that time. It was after the squabble over it had stopped.

Q. Did Mr. McGlinn at any time make any threats against the Democratic Sheriff of that precinct, if so, state what he said?

A. He did; he began early in the morning threatening him with arrest by United States Marshals. I didn't hear what the beginning of it was, but he alarmed the man very much, and I had to reassure him a number of times that he would not be disturbed.

Q. Was there any falling off of the Democratic votes from the registered vote of that precinct on that day?

A. Yes, sir.

Q. How many?

A. There were twenty-seven or eight registered Democrats who did not offer to vote.

Q. What is your occupation, Mr. McDonald?

A. I am an architect.

Q. How long have you lived in Louisville?

A. I have lived in Louisville steadily since 1871.

Cross-examination by Mr. Sweeney:

Q. This gentleman that you speak of who claimed to be a United States Marshal, as a matter of fact he was not a United States Marshal?

A. I think not; I was told by Mr. Speed, the clerk of the United States Court that he was not; but I didn't know that until more than three weeks after the election.

Q. Do you believe every Republican who comes around and tells you an election story?

A. If I know him to be a man of good character.

Thereupon the Board adjourned until Tuesday, January 16, 1900, at 9 o'clock A. M.

FRANKFORT, KENTUCKY, January 16, 1900.

The Board met pursuant to adjournment at 9 o'clock A. M.

Fontaine T. Fox, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. Please give your full name and occupation?

A. Fontaine T. Fox; residence, Louisville; lawyer.

Q. How long have you lived in Louisville?

A. Since January, 1866.

Q. What official positions have you held in said city?

A. I was first a member of the Board of Aldermen; then Assistant City Attorney, and then Judge of what is now the Louisville Law and Equity Division of the Jefferson Circuit Court.

Q. Were you in the city of Louisville on the election day, November 7th, 1899, and for a month prior to that time?

A. Yes, sir.

Q. I will ask you in your own way, to state to the Commission what you know of the articles published in the newspapers, incendiary in their character, of the threats of militia, of the presence of militia, and their conduct and effect upon the election and upon the voters; just tell all that you know without my having to ask the questions.

Objected to.

Q. State the character, what you know.

By the Chairman: The Chair thinks that papers ought to be produced.

By Mr. Kohn: I am asking him what he saw and read and the effect upon the public mind.

A. I take the Louisville Dispatch and read it; I take the Louisville Post and read it; I take the Courier-Journal and read it; I buy the Times on the street. I read a great many of those articles. I did not read them all. I got tired of reading them and quit it. In one of the articles—

Objected to. Objection sustained, the Chair holding that the article ought to be produced.

Q. Just state the facts; it would take some time to get these articles; just tell what you saw and what you heard and what you know on the subject of the military being in Louisville on election day.

Contestee objects to the question insofar as it relates to what the witness heard.

By the Chairman: I think the question as to what he knows about it ought to be sufficiently comprehensive.

A. On the morning of the election about 11 o'clock, a little after, I left my office going to Main street on business, and went into the Kenyon Building to attend to some business with a brother lawyer in there, and came out, and as I came down to the front door and was standing on the steps, I saw a company of soldiers file in from Main street, and watched them going to Rufer's hotel—Rufer's restaurant rather. I saw the captain, I saw the soldiers. The captain had his sword on, and the soldiers had their bayonets in scabbards belted around their persons. I went out on Main street to attend to my business and when I came back they had finished their lunch or their dinner and were then filing into Main street. I think there were about thirty of them.

By a Committeeman. What time was that?

A. Between eleven and twelve o'clock in the morning, before dinner.

By Mr. Phelps. On election day.

A. Yes, sir. They were marched up and down Main street.

Q. (Mr. Kohn resumes) What portion of the city was this in which they were marched as to the prominence of that portion of the city?

A. It is the wholesale portion of the city, and the very central part of the city of Louisville.

Q. You stated that you first saw them march to Rufer's Hotel?

A. Yes, sir.

Q. I will ask you to state whether there are hotels and restaurants between the place where they were staying at the armory on Main between Sixth and Seventh and Rufer's Hotel, closer than Rufer's.

A. There are two restaurants, Seelbach's restaurant on the corner of Sixth and Main and the restaurant of the Louisville Hotel almost immediately opposite to the wholesale house in which these troops were quartered, directly opposite or across the street, I mean. Seelbach's Hotel is a little above, a little east of that house where they were quartered and the restaurant of the Louisville Hotel is almost immediately opposite.

Q. During your residence in Louisville did you ever know of an armory being located in that neighborhood, the wholesale district of Louisville?

A. No, sir.

Q. Before?

A. No, sir.

Q. How long before the election did you know of the threat of militia?

A. It had been talked about in the city of Louisville by all sorts of—

Objected to.

—men who are interested in politics for some days before the election.

By the Chairman. I think he may state from his knowledge of the state of the public mind.

By Mr. Kohn. Just state from your knowledge of the public mind what the effect of the militia in Louisville was upon the people and upon the voters in Louisville upon election day.

A. I do not and did not know of a single man in the city of Louisville who was personally intimidated and kept from voting, but I do know that a great many men in the city of Louisville did not vote simply because the militia were known to be there ready to be drawn out.

Q. Do you know when they were called out on that day and how they were called out?

A. No, sir; I do not, further than what I saw.

Q. Did you see any of the guns or ammunition displayed there, except what you have stated?

A. No, sir; none except what I saw.

Q. I will get you to state whether there was published in the newspaper known as the Evening Post about a week or ten days before the election a charge given by the Federal Judge and extracts and comments thereon in the newspaper—in the Post of the city?

A. Yes, sir; I read it.

Q. I will now read you the articles:

Give the Rascals the Law.

We hear much talk about the laws of the United States not applying to State elections; but that question is fully set at rest by the charge of Judge Evans of the United States Court, to the Grand Jury on October 8th.

Section 5507 of the United States statutes is in this language: "Every person who, by any unlawful means, hinders, delays, prevents, or or obstructs, or combines and confederates with others to hinder, delay, prevent or obstruct, any citizen from doing any act required to be done to qualify to vote, or from voting at any election in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial sub-division, shall be fined not less than five hundred dollars or be imprisoned not less than one month, nor more than one year, or be punished by both such fine and imprisonment."

And Section 5508 provides:

"If two or more persons conspire to injure, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall

be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the Constitution or laws of the United States."

In his charge to the grand jury, Judge Evans said, "And I will say to you, further, that this statute does not apply to Congressional elections nor to Presidential elections only. It applies to all elections in which the colored man has the right to vote. It was enacted for the purpose of guaranteeing to the colored man the right that the people had given him under the Fifteenth Amendment to the Constitution of the United States."

The duty of the policemen at a precinct is merely to preserve order. They can not hinder, delay, prevent or obstruct a citizen from voting, nor can they conspire with others to injure, oppress, or threaten or intimidate any citizen in the exercise of his vote. The fact that a man wears a policeman's uniform is no protection for him. It is no part of his duty as policeman to hinder, delay, prevent or obstruct voting or to combine with others to injure, oppress, threaten or intimidate voters.

The Executive Committees of the political parties should instruct their workers at the polls to go before Henry F. Cassin, United States Commissioner, at Fourth and Chestnut Street, and swear out warrants against policemen or any other parties who may violate the Statutes. They should not wait until after the election before swearing out the warrants, but should set the machinery of the United States law in motion against the offenders at once. One or two arrests of policemen for violating these laws would put a stop to any similar violations during the election.

The spectacle of a United States Marshal arresting and taking from the polls a policeman of the city of Louisville would indeed be a disgrace to the city, but it would be much less of a disgrace than to allow adherents of Goebel to steal the election by methods inhibited by the United States laws.

There will be no difficulty about executing such arrests promptly. The minute the warrant is sworn out and placed in the hands of the United States Marshal, he will see to its prompt execution.

So we say to those who wish an honest election, "put not too much reliance upon promises, but be prepared to meet offenses against the law by the remedies prescribed by law."

(The above appears in the Evening Post of October 27th, 1899.)

Q. I now read you an article dated Tuesday morning, November 7th, which was the morning of the election, published in the Dispatch of that date. The headlines are :

Governor Bradley Called Out Troops.

The Legion Is to Be in Readiness in Case There Is Serious Trouble.

The Good Citizens Became Alarmed.

Result of the Excitement which Prevailed at the Change in the Election Officers.

Governor Bradley Will Be in Command.

Soldiers Not to Be Used in Intimidating the Voters as the Police Have Been.

In view of the well known and announced determination of the Goebelites to create trouble in this city to-day, and acting upon the request of a large number of the leading citizens of Louisville, Governor Bradley last evening ordered the Louisville Legion to be on hand to preserve the peace and protect the lives and property of the citizens if it became necessary.

The following letter was read by the Hon. Augustus Willson at the Auditorium last evening, where Governor Bradley was billed to speak :

HON. A. E. WILLSON :

My Dear Sir : In view of the intense public excitement now prevailing in this city, and the fact that numerous affidavits of good citizens have been filed with me showing that there is great danger of riot and bloodshed and that citizens will be prevented by force and fraud from exercising their right in this city to-morrow, and in view of the further fact that I have been and will be called upon to act as chief police officer of the Commonwealth, I have concluded that it would be improper for me to deliver an address this evening.

I will thank you to assure those who may kindly honor me by their presence that I will remain in the city and see that every voter, irrespective of political opinion, is protected in his right to vote and have his vote counted and the public peace maintained at all hazards.

I do not intend to surround the polls with bayonets or intimidate voters. I do intend that they shall not be intimidated, and will act promptly wherever necessity arises.

Yours,

W. O. BRADLEY.

In accordance with Governor Bradley's instructions, messengers were sent through the city last night notifying members of the Legion of the call.

At the Armory.

The armory presented a busy scene soon after the issuing of the order. The halls were crowded with the soldier boys. The Gatling gun arrived from Frankfort yesterday morning, and last night the gun crew, under Major Colston, was put to work and thoroughly drilled in the use of the big gun.

Every man of the eight companies which go to make up the Legion will be at his place in the armory and be ready for duty in case trouble arises at six o'clock this morning. Each man will be armed with the new Springfield rifles, and of ammunition there will be a plenty, as the recent equipment of the Legion gave the men over 40,000 rounds. In addition to the Gatling gun, the Legion also has one piece of artillery which can be used if necessary.

At the armory last evening everything was in an orderly sort of hurry. Of instruction and drill there was but little, as almost all the men are seasoned veterans of the Spanish-American war, and can be depended on to do their duty.

The few evolutions gone through with last evening showed them to be in fine trim. Col. Gray was present overlooking the preparations. He expressed himself thoroughly satisfied as to the ability of the men to cope with any emergency. When asked if he thought one would arise, Col. Gray said that he did not know, but that if trouble occurred it would most likely be expected just after the polls opened, or shortly before they closed.

The Legion will be under the command of able and experienced officers of the line. These officers saw service with the men and have earned their respect and devotion, for the men know that their officers will not lead them into the wrong place, and hence any order that they give will be obeyed to the letter.

One of the chief incidents which influenced the respectable citizens of the city to have the Governor call out the militia was the announced determination of Weaver, Lyons, and Suter, to call in a thousand armed thugs, disguised as police to assist in the work of intimidating the anti-Goebel voters. All day yesterday Lyons and Suter and Weaver were selecting men who could be depended on for any thuggery that may be asked of them at the polls. The list was so long that the work took most of the day. It was openly stated that Lyons and Suter would swear in a sufficient number of these men "if they thought it necessary;" that they thought it necessary was plainly seen last evening, when Chairman Lyons of the Board of Safety, called a meeting of the Board for 6:30 o'clock this morning, when the extras will be sworn in.

Among the other usurpations of power which Mayor Weaver and his gang has attempted there is none more preposterous than the assertions openly and repeatedly made by the gang yesterday that if the militia were called out they would have to be turned over to the command of Weaver as the highest civil authority in the city. The law says that the militia shall be subject to the civil power, and that the Governor may designate either the Mayor, Sheriff or Jailer or the highest civil authority to direct their operations. It is upon this part of the law that Weaver made his claims.

Bradley Will Command.

The troops will be under the command of Gov. Bradley himself, the highest civil authority in the State. The officers in command of the troops will be under his directions, and whatever measures the Governor may deem necessary to preserve the peace will be carried out by them in the proper military manner. The troops are not to be used in intimidating the voters at the polls, as Weaver's police will be used, but are to be kept at the armory until such disturbance arises that the civil government can not cope with it.

A mighty howl of protest went up last evening from the Weaver people when they saw their bluff had failed and that the militia, along with everything else, was not going to be turned over to them to be used in their anarchistic measures. A consultation with legal authorities in the matter abatted their indignation somewhat when they found that the law did not say that the Governor must turn the troops over to the Mayor, and found precedents in various States whose military system is similar to that of Kentucky where the Governors had assumed charge of the troops in person. Naturally they then tried to make it appear that the troops had been called out to intimidate. In other words, they expected to be given a dose of their own medicine, but good citizens will rejoice to learn that the troops are to be kept at the armory ready to suppress any disorder. They are able to cope with any emergency and if intimidation comes it will be from the gang who are making smoke to hide their own evil purposes.

The troops will not be called from the armory unless it is absolutely necessary.

Q. Now, Judge, without reading any more of these articles, I will ask you what was the effect of the charge of Judge Evans, or do you know whether or not Judge Evans, after giving that charge, adjourned the October Grand Jury over until after the election in November?

A. I understood so; I don't know it. I so understood. I read his charge to the Grand Jury both in October and November.

Q. And I will ask you what the effect of that, together with these articles, one of which I have just read you, of Governor Bradley and the presence of the troops upon the streets, as you have stated, was upon the voters of the city of Louisville?

Contestees object to questions about Judge Evans holding over the Grand Jury.

Q. We can reserve all those questions.

By Judge Yost. We want them acted on as we pass them.

While contestees were looking to see whether the holding over of the Grand Jury was embraced in the notice, Mr. Kohn resumed.

Q. While you are looking for that I will get on to something else. Was there any necessity for troops in Louisville on election day?

Objected to, objection overruled.

A. Not that I know of, and nothing that I heard on the part of anybody in Louisville.

Q. Anything you saw on election day that required anything of that character?

A. Nothing whatever.

Q. I will ask you—not the effect of the acts of Evans and his charge, but the effect of this call and this publication and publications of a like character which had preceded it, and the publication about having the Gatling gun in Louisville and ammunition ready for business?

Objected to, as not embraced in the notice; objection overruled.

A. There is no doubt in my own mind from what I saw on the streets in Louisville, and from what I heard respectable men say, orderly, dignified men in the city of Louisville, who are not accustomed to bawls, and do not seek difficulties—

Objected to.

By the Chairman. Let him state what he may know about it.

A. I was simply intending to state the character of the men that I heard talk on the subject. I have no imagination about it whatever, so far as I am concerned.

By Mr. Kohn. State what you know?

A. From what I saw and what I heard, and that is the only way I got my opinion, it had a very depressing effect upon the minds of the voters of the city of Louisville, and unquestionably kept a great many men from the polls; whether they were Republicans or Democrats I don't know, but a great many men because of those publications in the newspapers, Judge Evans' two charges to the Grand Jury, and the presence of soldiers on the streets, at noon, unquestionably did not go to the polls to vote.

Q. I will ask you to state whether or not a great many or a few persons were apt to see or did see those soldiers on Main street and Fifth street at the time you saw them and at the hour of the day which you have described?

A. Well, when I came out of the Kenyon Building there were some; I suppose there were a half dozen men standing there; I think they stopped to look at the soldiers just like I did, and we were all talking about it. I engaged in a conversation for a little while with them, and there were quite a number of men on Main street attending to their business, who saw them, quite a large number. It is a very busy hour, about between eleven and twelve o'clock on Main street.

Q. A street car line there on Main street?

A. Yes, sir.

Q. Passing and re-passing all the time?

A. Yes, sir.

Q. One of the most—as I understood you to say, one of the most prominent thoroughfares of our city?

A. Yes. sir.

Cross-examined by Mr. Sweeny, for the contestees.

Q. What time did you leave the polls that morning? What time did you leave the poll?

A. I first went to my precinct and voted and then went to my office.

Q. What time was that?

A. That was early in the morning, immediately after the polls opened.

Q. When you got to or reached your voting precinct, did you find any soldiers there?

A. No, sir; I live away out in the rear part of the city, not in a very densely populated part of the city.

Q. Did you find anyone to interfere with you in any way in casting your ballot?

A. No, sir; perfectly quiet. We are a very orderly people in the neighborhood where I live.

Q. Not easily intimidated?

A. I can't say about that. What will intimidate one man will not intimidate another.

Q. You went and voted?

A. Yes, sir.

Q. Judge Evans' charge didn't keep you away from the polls, did it?

A. No, sir.

Q. Can you tell this Committee of a single, solitary, legal, qualified, registered voter of the city of Louisville that it did keep away?

A. Personally I could not give you the name of a man that stayed away that I knew, but I heard it very much discussed.

Q. You lawyers, sitting around Louisville, when you are waiting for a client, discuss everything that comes up, don't you, as a general proposition?

A. Yes, sir; I heard it discusssed in the drug store where I buy my cigars after supper. A great many men meet there as a meeting place to discuss things in general.

Q. Talk about everybody in creation?

A. No, sir.

Q. And then go off and abuse one another, is that the rule?

A. No, sir; we are a very good natured set of people; we don't quarrel; we are neighborly.

Q. You say that the military were out on the street; how many soldiers did you see upon the streets?

A. Without counting them I thought there were about thirty.

Q. You said they marched up the street; did you see them as they went up?

A. I saw them just as they turned in from Main street to Fifth to go to Rufer's restaurant, which is a short distance from Main street, about the distance of this hall.

Q. In your statement you said they marched up and down Main street; did you see them as they returned?

A. I was coming in Fifth street from Main as they were passing out Fifth street into Main after they had finished their lunch.

Q. They were under the charge of an officer, were they not?

A. Yes, sir.

Q. They were orderly, were they not?

A. Oh yes.

Q. No disorderly conduct on their part in any way?

A. None at all.

Q. Had no gun at that time?

A. Only had what I say, bayonets in scabbards, belted around their persons.

Q. You have stated to the Committee that you could not give the name of a single voter that was intimidated and kept away from the polls?

A. Yes, sir.

Q. But that you did know that the presence of the military in the city prevented a great many people from voting; I will ask you to give the name of a single voter in the city of Louisville, the rumored presence of the militia there prevented from going to the polls to vote?

A. That I tell you I couldn't do.

Q. Didn't I understand you to say to the Committee that you did know that their presence there prevented people from voting?

A. I said I was fully convinced that it did, but I don't know the name of a man.

Q. Didn't you say to this Committee that you knew the presence there of the militia did prevent people from going to the polls to vote?

A. If I said I knew it, I knew it just simply as if I knew a fact from the conviction of testimony.

Q. How do you know that to be true if you can't give the name of a single voter that was prevented from voting?

A. From the general talk that I heard of men in the city of Louisville.

Q. As a matter of fact, the men that were talking, did they not go and vote?

A. I don't know that to be true.

Q. Tell us the names of the people that you knew talked?

A. I can't do that, because I made no memorandum at the time; it has been over a month.

Q. You can't give us a single name?

A. No, sir.

Q. Of a person to whom you talked on the matter?

A. I talked to a great many people.

Q. If you talked to a great many, can't you give us the name of a single man?

A. That was the first part of November, and this is the middle of January, and I made no memorandum of it, supposing I would be called to give the testimony; if I had, I would have made a memorandum.

Q. Can't you give a single name of any gentleman that you talked to, among your associates or otherwise, upon that question —can't give the name of a single one?

A. Yes, sir; I have talked to brother lawyers, a number of them?

Q. Whom?

A. I have talked to Mr. James Shrader.

Q. Did he vote?

A. I don't know.

Q. Did it keep him away from the polls?

A. I don't know, he doesn't vote in the same part of the city that I do.

Q. Did you speak to Mr. Phelps—Mr. Zach Phelps?

A. I don't know whether I did.

Q. You don't know whether it kept him from voting?

A. No, sir; I don't know anything about that.

Q. Did you talk to Mr. Kohn?

A. No, sir; I don't think I did.

Q. You don't know whether it kept him from voting?

A. No, sir.

Q. Did you talk to Mr. Lee Suter?

A. I think I did on one occasion.

Q. Did he vote, or not?

A. I don't know.

Q. Did you talk to Mr. Bill Haldeman?

A. No, sir.

Q. It didn't keep him from voting?

A. I don't know.

Q. Will you please be kind enough to give to this Committee the name of a single gentleman to whom you did talk of this matter who was prevented from voting by the rumored presence of the militia?

A. I can't do that; I told you I couldn't do that.

Q. Wasn't it a peaceful, quiet and orderly election?

A. Yes, sir.

Q. Do you know of a single arrest being made upon that day?

A. Personally I do not.

Q. Do you know of any United States Marshals being present at the polls?

A. Personally I do not.

Q. Do you know of any arrests that were made?

A. Personally I do not.

Q. Except by police?

A. Personally I do not.

Q What time—where did you go after you voted, I mean did you go to your office?

A. I went to my office.

Q. You stayed there all day, did you?

A. No, I was out on the street.

Q. Your usual routine work?

A. My home is very near my precinct, my voting precinct.

Q. Was there any voting precinct near Rufer's Hotel?

A. I don't know.

Q. You speak of Seelbach's Hotel; that is a restaurant down there?

A. Yes, sir

Q. A sort of Goebel headquarters there in the city?

A. I don't know that; I never was in Mr. Goebel's headquarters in my life; I don't know Mr. Goebel.

Q. It is a high-priced place?

A. I don't know.

Q. Seelbach's.

A. I don't know that. I don't suppose it is any higher-priced than Mr. Rufer's. Mr. Rufer has made an immense fortune for his family out of his restaurant to which I have contributed a good deal myself.

Q. In passing from the armory to Rufer's Hotel did the troops pass a voting place?

A. No, sir; no, they did not.

Q. Did they pass in sight of one?

A. No, sir, I reckon not; I think the nearest voting place to these headquarters is the Court House, which is on Jefferson street between Fifth and Sixth.

Q. You have stated, giving it as your opinion, not being able to give the name of a single voter that was intimidated or kept away from the polls by reason of the rumored presence of militia

there. I will ask you if the converse of that proposition is not likewise true in the way you have stated it, that a great many people did not probably go and vote who would not have gone to the polls had they not have known that they would be protected against the police, by the rumored presence of the military?

A. Do you want me to give you my opinion?

Q. Yes.

A. Not a human being living in the city of Louisville did that in my judgment.

Q. You know as much about that as you do about the people that were kept away by the presence of the militia?

A. Yes, sir, and more, because the people of Louisville are not afraid of the police, and they know the police. I don't think that the people of Louisville are afraid of the police, and I do not think, under the action of Chief Haager, who is a most excellent officer, and under the action of Mr. Weaver, would have had anything to do with the election or troubled anybody.

Q. They never did, did they?

A. I don't think that they ever did.

Q. You never knew of their breaking up a primary election and taking charge of the ballots and ballot boxes?

A. No, sir.

Q. You never heard of that?

A. Oh, I have heard of that.

Q. You have heard of it?

A. I have heard of it, I don't know anything about it.

Q. You never knew of their going to the voting precincts on the day of a general election and pulling men out of line and dragging them away from the polls?

A. I don't know it.

Q. Did you ever hear of it?

A. I have heard of talk of that sort, but I never put any credence in it.

Q. Because you didn't want to?

A. No, sir; it wasn't that at all. Because the evidence didn't come to me that was sufficient to justify my believing it.

Q. Don't you know that the police force of the city of Louisville while on duty did go and break up a primary election and take charge of the ballot boxes in that city?

A. I have heard it so stated.

Q. Don't you know as a matter of fact, even from hearsay, as your testimony is chiefly hearsay, that every policeman in the city of Louisville, and every city official in the city of Louisville, that the Sheriff of your county was the chairman of the Goebel Democratic Campaign Committee, that your Jailer left his jail and visited some thirty or forty precincts, voting precincts in the city of Louisville, and was an active worker in behalf of the Goebel ticket, and that every civil authority of the city of Louisville, from

your Mayor down to your street sweepers, were arrayed upon the side of the Goebel ticket, and behalf of the city administration?

A. No, sir; I cannot—

Question objected to.

A. I am very willing to answer the question.

By the Chairman. On the basis of hearsay, as put by counsel, it would be an incompetent.

Samuel J. Bolderick, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. What is your business and place of residence?

A. I am an attorney-at-law; I reside in Louisville, Ky.

Q. How long have you resided at Louisville?

A. Since the fall of 1892.

Q. Were you at the Court House on election day, November 7th, 1899? I will ask you to state what you know about the application for and the granting of an injunction—mandatory injunction—by the Hon. Sterling B. Toney on election day, the time it was granted, how it was done, and all about it?

Objected to; objection overruled.

A. About ten o'clock on the morning of the election I had some business in the Chancery Court, over which Judge Miller presides. While I was there there were a number of applications for mandamus suits seeking to have colored people to vote who lived on Linden street. Nobody was there representing the Democratic party, and I volunteered and succeeded in defeating these mandamus suits. Judge Miller overruled them all. About sixty colored people had registered illegally up on Linden street, and it was the purpose of these mandamus suits to get these people to vote. After that was done, I met Mr. Kohn and Mr. Phelps, and they thanked me, said that they represented the Democratic party, that they had to go away, and if anything else turned up of that nature, they would be glad if I would attend to it. I went upstairs in the Clerk's office, and as I came out I saw Judge Toney coming up the stairs, and following him were Mr. Smith, I believe the ex-United States Attorney, and Mr. J. T. O'Neal, both lawyers in the city of Louisville. I was apprehensive that these mandamus suits were going to be brought before another Judge, so I followed them into the Law and Equity Court room.

By Mr. Phelps. That is Judge Toney's court room?

A. They said they had an injunction.

Objected to.

By the Chairman. He may state what he learned there.

They said that they had an injunction which they desired the Judge to grant. The Judge said he had been telephoned to come down and he wanted to know what it was—what he had to do, what was before him on that morning. I arose, when I learned that there was an injunction to be gotten out, and spoke to Judge

Toney, and told him that Mr. Kohn and Mr. Phelps had informed me that they represented the Democratic party, and that I would ask him to postpone the matter until they could be there and be heard upon it. He declined to have the matter postponed and ordered them to read the petition.

Q. (Mr. Kohn resumes.) Did you ask for what length of time you desired to get us there?

A. I said I could have you there in a few minutes, and he said he would hear the petition read. After he heard the petition read he asked me what I had to say, and I told him again that you would very probably be in in a few minutes, as I had told Mr. Darwin Johnson to inform you that this matter was up, and he declined to grant any time at all. Then I arose and stated my objections to the petition, stating that I thought that he was acting without jurisdiction, that it was a matter of great importance to the Democratic party to be heard upon it.

Q. What was the object of the petition and what was it sought —what was the character of the relief sought?

Contestees object to the witness stating the argument. Objection sustained.

By the Chairman. Let the witness state what occurred.

A. Judge Toney declined to grant any time at all; he said that he was thoroughly posted about the relief sought, that he had read the newspapers, and was well satisfied as to the law; that he had also read the letter from Judge Pryor who had sat upon the bench and was Chief Justice for many years, that he had read his letter to Mr. Desha Breckinridge, that he was well acquainted with everything, that the relief sought by them, and that he was going to give it, that he was going to sign the order of injunction, that he would also give them challengers if they would ask him for them.

Q. Give whom?

A. Give the Brown Democratic ticket of which Mr. Wright was Chairman, would give them challengers if they asked for it. Of course I had nothing more to say, and he simply had the order of injunction read to him and it was signed immediately.

Q. How was the injunction? Printed or written? How were the orders and papers, printed or written?

A. The petition I suppose speaks for itself. It was typewritten, signed by John Young Brown, and the orders were all typewritten, but the names of the officers were all printed.

Q. Wasn't the order also printed?

A. I may be mistaken about that, but I know the names of the officers, a great list of names, seemed to me like many hundreds, a great stack of them, which were to be attached to the order, were all printed.

Q. What else occurred; what else happened?

A. Just as Judge Toney was—

Contestees at this point raised the objection coupled with the action of Judge Toney, was that the officers of election were compelled to sign false and fraudulent returns, etc., and that the testimony was not competent.

The objection was afterwards withdrawn.

A. After Judge Toney had signed the order of injunction he came down and started out of the court room, when Mr. Kohn and Mr. Phelps came in; they told him that they wanted to enter a motion to dissolve the injunction and desired to be heard upon it. He didn't stop to talk to them.

Contestees object to witness stating any argument.

The Chairman. Just confine yourself to what occurred.

A. I am not proposing to do that at all. Judge Toney replied that he was going over to the office of Mr. Clarence Walker, he would be there until after four o'clock and if they wanted to see him they could come there and see him. He then walked on out of the Courthouse. Mr. Kohn and Mr. Phelps followed him shortly, and I don't know anything more that occurred.

Q. You are acquainted with the citizens of Louisville, and especially with the German citizens of Louisville, are you not, you have a large acquaintance with them?

A. I can't say that I am, I don't know a great many people. I know quite a number of them.

Q. I will ask you what you know about the militia and the threats of the militia being there on election day and the Federal interference by Federal officers and the effect it had upon that people?

A. I can only answer as to part of that question. About one o'clock on the day of the election I had occasion to go to the First National Bank at Fifth and Market. As I came out of the bank I met several parties and stopped there to talk to them. Among them were Congressman Dave Smith, I believe, and Mr. William Krieger, I think this was the time; anyway it was on election day, and I saw a company of soldiers marching down, going west on Main street. They were unarmed, however, as far as I could see, although I heard the captain of the company give the command "Right oblique" and they passed and I saw nothing more of them until four o'clock that day, I went down the street and was opposite the armory and I saw the soldiers standing in the armory. That is all I know about the military. What effect the military had there I am unable to say because I don't know.

Q. Was there any necessity for the military there on election day?

A. Well, it was the most quiet election day that I have ever witnessed in Louisville.

Cross examined by Mr. Sweeny.

Q. You voted?

A. I had the pleasure of voting, but my vote was not counted, as my precinct was thrown out. It gave 112 majority to Goebel, I believe.

Q. Who threw it out?

A. The committee had failed to sign the returns. I voted at 8th and Green, I believe it was the 12th precinct of the Ninth Ward. I remember particularly that it was not counted, although the newspapers said that it gave over 100 majority to Goebel.

Q. Who threw the precinct out?

A. The election officers who had the right to do it.

Q. The Election Commissioners?

A. The Election Commissioners.

Q. Who were the election officers?

A. I don't know who the officers were.

Q. Who were the Election Commissioners?

A. Mr. Caruth, Mr. Hoertz and Judge Barr.

Q. The election officers were appointed by these Election Commissioners, were they not?

A. They were appointed, of course.

Q. Did anybody attempt to interfere with you in any way when you went to vote.

A. None whatever.

Q. You saw no disturbance of any kind at the polls?

A. I say it was the most quiet election day that I ever saw. Everything was conducted in a most orderly manner, and it is the only election that I ever saw there where the people were kept within the law, that is, fifty feet away from the polls.

Q. This was one of the elections where the police did not interfere with an election in the city of Louisville?

A. They didn't have any part in this election.

Q. They didn't take any part, consequently it was a very quiet and peaceful election.

A. Yes, sir.

Q. It was a very quiet and peaceful election?

A. Very quiet and peaceful election, I will say that much, I don't know anything about why it was so.

Q. You didn't get scared nor frightened when you saw that company of military on the street?

A. Not a bit in the world.

Q. How long have you lived in Louisville?

A. I have lived there for seven years.

Q. You came from Lebanon there?

A. Yes, sir.

Q. The gentleman on the other side asked you a question about your acquaintance with the Germans; you are not a German, are you?

A. No, sir, I am not a German.

Q. You are an Irishman?

A. I have been associated to my sorrow with several Germans in Louisville, although I am very fond of the German people.

Q. Did you know, or can you give to this Committee the name of a single solitary citizen in the city of Louisville who was a duly registered, qualified and legal voter that was deterred from voting or intimidated by reason of the rumored presence of the militia there?

A. I can not. I can only state the fact that they were there and then you can draw your own conclusions. I know nothing of that kind.

Q. You don't know of any person that did not vote for that reason?

A. No, sir; I don't know of one, I never inquired about it.

Q. You saw nothing on the day of election in your judgment, as I understand it, or to your knowledge, that had any tendency in any way to prevent any voter from going and casting his ballot as he saw proper?

A. Well, I saw nothing, I don't know, I couldn't judge that, because I don't know what the effect a company of soldiers would have upon anybody. I know it has no effect upon me, and I don't know of anybody that it did have any effect on. That is all I can say.

Q. Nor never heard of anyone, did you?

A. I have never heard of any particular person.

John H. Page, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. What is your position in the city of Louisville?

A. Clerk of the Jefferson Circuit Court.

Q. You are the Clerk of the Jefferson Circuit Court?

A. Yes, sir.

Q. As such have you the record of the Law and Equity Division of that Court?

A. Yes, sir; I have.

Q. Have you with you the records in the case of John Young Brown against Charles P. Weaver and others filed on election day?

A. I have the papers and the record with the exception of what is entered in the order books.

Q. Will you please present the petition and the orders made in that case on election day?

A. Well, I have them in these boxes.

Q. I now show you what purports to be one of the copies of the injunction bond, copy of the injunction executed in that case, and the petition—

A. This is the bond.

Q. This the petition?

A. This is the petition.

Q. This the summons?

A. This is a copy of the summons and the order of injunction.

By Judge Yost. I think we would save time if the gentleman would read it.

By Mr. Kohn. Well, hand it to me, and I will try to accommodate the gentlemen in some way. I am not going to read it now. That is the petition, the order of injunction, and the injunction bond and the summons, is it not?

A. That is the petition, a copy of it.

Q. I notice that the order of injunction, the summons, and the names of all the parties in the injunction bond are all printed?

A. Yes, sir.

Q. How many of those printed matters were there at the time, how many did you issue on election day in obedience to that order of Judge Toney's?

A. I don't know exactly. We were in a great rush there, and so many different ones issuing them, Deputy Clerks, that it is pretty hard to keep track of them.

Q. About how many?

A. Between two and three hundred.

Q. Did the Clerk, did you as Clerk, or the Deputies have this matters printed?

A. I did not.

Q. Did you know of their being printed or having been printed?

A. Not until they were presented to me.

Q. I notice upon the petition endorsed that this petition was filed at 11:15 A. M. on election day?

A. It was.

Q. At what time were these orders of injunction, and these summons issued, and to whom were they delivered?

A. They filed their petition. I had heard rumors of an injunction, I knew nothing of it, however, until it was in the papers. Of course, I knew the importance of giving out writs. Sometimes immediately, it is nothing unusual there in my office of course, nothing as large as this, and I had the petition endorsed myself, I did not do it myself, but one of my deputies did it, but I told them to mark on there the time, the hour. It was immediately taken in before Judge Toney who had come in and was on the bench. The petition was read to the Judge and of course Mr. Boldrick was there and the other attorneys, and they were discussing it a little bit, I think that took about fifteen, twenty or twenty-five minutes. I think the Court in about from fifteen to twenty-five minutes ordered the injunction to issue. In the meantime—the petition was filed at 11:15. It was immediately taken into the court room across the hall from the clerk's office. He requested counsel to read it, which was done, with the exception, I think, of the names; had them omitted, there was a large number of them, and I was not in the court room all the time because Mr. Boldrick was there and the other attorneys, and they were dis-

cussing it, which took about fifteen, twenty, maybe twenty-five minutes. In the meantime knowing the—I felt the importance of the thing, that it was going to be done, I was preparing the bond myself and my deputies had the summons and writs there which had been delivered to me by the attorneys, when the petition was filed.

Q. By the attorneys for the plaintiff?

A. Yes, sir, I was preparing the bond. I didn't pay much attention to what was said by the attorneys or the Court either, but I know that after the petition was read and these remarks made and conversation between the Court and the attorneys the Court ordered the injunction to issue. I had the bond prepared and I qualified Mr. J. T. O'Neal who went on the bond. I then immediately went to work, of course I put all six deputies to work to signing these writs, and getting them out. I think the first list were delivered about a quarter to twelve o'clock to the Sheriff or to the attorneys.

Q. I will not read these now, but consider them read for the present. We will read them afterwards and incorporate them in the records.

The contestees insisted on the papers being read.

Q. I understand you when this petition was read to Judge Toney, all of these printed names were omitted?

A. Well, I won't be certain about that, but I think that was done.

Q. They didn't take time enough to read them?

A. I don't think they read all those names to the Judge.

By Mr. Kohn. I shall do like the Judge did and omit the names and the printed matter.

JEFFERSON CIRCUIT COURT.

The Commonwealth of Kentucky,

To the Sheriff of Jefferson County, Greeting:

We command you to summon

Charles P. Weaver, Mayor of city of Louisville, W. L. Lyons, Edward Tierney and Lee Suter, constituting the Board of Public Safety of said city, and the following persons as election officers of Jefferson County in the following precincts, viz.:

First Ward.

First Precinct—Chris Knauer, Isaac Stoll, J. Horn, James Long. Second Precinct—Phil L. Brown, Charles Brown, Jesse O. Brown, John Tapp. Third Precinct—Thos. Murphy, W. C. Evans, D. G. Gilbert, L. P. Smith. Fourth Precinct—Henry D. Card, James H. Howard, John E. Bellm, C. C. Hoskins. Fifth Precinct—Richard C. Bennett, Matthew Schupp, R. Minton, Wm.

Kloz. Sixth Precinct—Mike Hannen, Wm. Alt, Scott Childers, J. M. Smock. Seventh Precinct—Walter Sinkhorn, H. T. Snyder, Clements Brucker, A. H. Benton. Eighth Precinct—E. A. Steltenkamp, John M. Richards, Edward Traub, John E. Hempel. Ninth Precinct—John Mayer, Frank Brohm, James Murray, Louis C. Gray. Tenth Precinct—Thos. J. Countin, Frank Rogers, Ed Gorman, Edward Stoll. Eleventh Precinct—Wm. Breunig, Jacob Bickel, Julius Jahm, Wm. J. Gaugh. Twelfth Precinct—John Bartman, Geo. W. Orrill, John Kentz, R. H. Redding. Thirteenth Precinct—James Kelly, Ben Boyer, Chris Untenreiner, Robt. Sparks. Fourteenth Precinct—Chas. P. Leshaft, Chas. Speed, B. F. Likes, John Baron.

Second Ward.

Fifteenth Precinct—J. L. Fitzhugh, John H. Jacob, J. W. Nadders, C. Metzger. Sixteenth Precinct—Ben Reuters, Geo. W. Frantz, Jr., Daniel Walter, L. Hoffman. Seventeenth Precinct—Henry Strube, William DeForrester, George Solomon, John Mack. Eighteenth Precinct—William Beuters, William F. Dillis, Louis Schwartz, John Rudolph. Nineteenth Precinct—J. Schlangenottee, J. Braun, John Wahl, Nick Guttermuth. Twentieth Precinct—John Thiesing, Ballard Trull, John Oppel, Peter Hallenthal. Twenty-first Precinct—George Schabel, J. B. Fuhrmann, J. Herin, William F. Gaul, Jr. Twenty-second Precinct—William J. Blum, George Eigelbach, J. H. Kessner, Julius Deter. Twenty-third Precinct—Ben Graetzer, Dave Heimerdinger, John Hettinger, James Lybrooks. Twenty-fourth Precinct—Robert Shaughnessy, George Stretz, Fred Dabble, C. E. Miller. Twenty-fifth Precinct—Joseph Schmitt, Joseph Young, A. F. Smith, Vincent Stemler. Twenty-sixth Precinct—Thomas McDermott, Charles B. Seidel, James B. Gordon, William Schlegel.

Third Ward.

Twenty-seventh Precinct—John Wendel, Peter Nuss, Wm. Murray, Louis Wolf. Twenty-eighth Precinct—Geo. Sheuser, Geo. H. Sherley, Posey Buckley, Pat Ahern. Twenty-ninth Precinct—John Heindel, Fred Dangler, Thos. Kinney, Wm. Smart. Thirtieth Precinct—Henry Netten, John C. Kurtze, F. W. Caldemeier, J. E. Close. Thirty-first Precinct—Wm. Schaeffer, Marion Eaton, Henry Frank, Adolph Wunsch. Thirty-second Precinct—Wm. Schweitzer, John Koch, Jacob Brietmeyer, Joseph Krebs. Thirty-third Precinct—Thos. Gensle, John Duff, Chas. Wursch, Wm. Sube. Thirty-fourth Precinct—Nicholas Stetler, Wm. Windhorst, Jacob Mayer, John Maurer. Thirty-fifth Precinct—Harry Omerroa, Wm. Miller, Henry Schultaun, Wm. Foster. Thirty-sixth Precinct—Henry Fau, Chas. Holzknecht, Henry Bierbaum, Mike Fishback. Thirty-seventh Precinct—Frank Monohan, John

Osterholt, Wm. G. Lutz, Wm. Kress. Thirty-eighth Precinct—J. N. Roberts, J. J. Iebolt, Conrad Wick, Joseph Woerner. Thirty-ninth Precinct—Geo. E. Moran, E. L. Cain, J. J. Schuster, John Ewald. Fortieth Precinct—W. P. Bowman, John Cook, Wm. Seaman, W. E. Kaye. Forty-first Precinct—T. J. Hennen, Geo. W. Yeager, Martin Eiggelbach, H. T. Reiger. Forty-second Precinct—Frank Schaeffer, Henry Marratt, Andy Gehringer, J. L. Gnau. Forty-third Precinct—Pat Flaherty, Ed. Calvert, Martin Fausch, J. Happel.

Fourth Ward.

First Precinct—Thos. Fitzgerald, C. Troxler, Chas. W. Zang, Jerry Hanlon. Second Precinct—Michael Yourell, Daniel Stark, Geo. Schmitt, Wm. Wagner. Third Precinct—Daniel Clark, Phil. Ketell, Geo. J. Guttermuth, Andy Fangeman. Fourth Precinct—Wm. Shouse, Julius Hild, Geo. Schorck, Rich. G. Tafel. Fifth Precinct—Fred. Clausen, A. A. Chickering, E. H. Marens, Sam Morningstar. Sixth Precinct—Wm. Dickerson, Paul Dressel, Marvin Hardt, Wm. Ramsay. Seventh Precinct—Frank Braun, Ben. Strahlen, Henry Maas, Frank McCloskey. Eighth Precinct—Ed. Leist, Christ Krippel, Thos. Hall, Henry Moorman. Ninth Precinct—Martin Wachtel, John G. Schappe, Wm. Hackman, Chas. Goss. Tenth Precinct—J. B. McCrocklin, Fred J. Drexler, L. Reichert, Arthur Jones. Eleventh Precinct—Walter Conners, Wm. Johnson, J. C. Schneider, Jim Garbett.

Fifth Ward.

Twelfth Precinct—Martin Abel, Christ Hotott, Chas. Abel, Henry D. Eggers. Thirteenth Precinct—Pat Halfpenny, Wm. Nord, P. Ogden, Dan Latimer. Fourteenth Precinct—James Stabbler, Robert Nussbaum, Henry Drury, David Schneider. Fifteenth Precinct—August Ninelist, Chas. Sandman, Louis Nord, Ed. Frank. Sixteenth Precinct—C. H. Watson, J. H. Bright, L. Karem, Geo. P. Bohn. Seventeenth Precinct—Frank Bauerle, Henry Forstig, Chas. C. Nolting. Eighteenth Precinct—Lee Simons, I. B. Webster, Walter Vander Espt, E. Greenberg. Nineteenth Precinct—Geo. Stickrod, John Greenwall, A. C. Black, J. E. Fais. Twentieth Precinct—R. H. Kilgore, Louis Drane, Mayer Hilpp, J. B. Ross. Twenty-first Precinct—Harvey Dudley, R. H. Dorn, Theo. McBurnie, E. J. Mercer. Twenty-second Precinct—Harry Redman, Adam Gunther, Hite Miller, Jacob Mohr. Twenty-third Precinct—Chas. W. Greer, E. B. Springer, E B. Dye, H. C. Pendelberry. Twenty-fourth Precinct—James R. Brucker, Alfred Pirtle, H. M. Brinley, Jacob Cramp. Twenty-fifth Precinct—John Hasson, A. J. Egelhoff, C. E. Johnson, Chas. Meyer. Twenty-sixth Precinct—Horace Gosnell, J. M. Todd, Percy Wilson, J. Middleton. Forty-fifth Precinct—J. P. Martine, R. R. Bennett, J. P. Cook, D. S. Augustus.

Sixth Ward.

Twenty-seventh Precinct—C. C. Bossung, Chas. Leonard, A. Fish, Wm. Smoots. Twenty-eighth Precinct—Chas. Oppenheimer, W. G. Baxter, G. M. Ridenauer, H. C. Price. Twenty-ninth Precinct—Frank J. Gosnell, Fred Ziegler, J. R. Masters, Phil German. Thirtieth Precinct—J. F. Nelson, Rube Harney, Wm. Gage, L. Steinfeld. Thirty-first Precinct—C. H. Musgrove, R. H. Mansford, L. W. German, H. H. Cuscaden. Thirty-second Precinct—Irwin Dugan, W. McKee Duncan, Stephen E. Jones, Louis Steinau. Thirty-third Precinct—W. Colter, E. S. Tuley, H. W. Glover, A. C. Arthur. Thirty-fourth Precinct—R. C. Snody, Sam F. Bagley, L. S. Craveson, W. G. Mulholland Thirty-fifth Precinct—J. S. Phelps, Jno. W. Morely, R. M. Kelly, L. H. Bell. Thirty-sixth Precinct—H. G. Eddy, George Newman, George Whitney, E. Marshall. Old Hickory Precinct—F. Mumford, S. Funk, Jno. Dickinson, Tom Dickerson.

Seventh Ward.

Thirty-seventh Precinct—Charles Elvin, M. Heissman, Samuel Tilley, Joseph Pierman. Thirty-eighth Precinct—C. Martin, J. B. Hall, P. A. Stokes, Daniel Tracey. Thirty-ninth Precinct—W. O. Watts, W. C. Edmundson, E. Sommers, Louis Ball. Fortieth Precinct—Chas. S. Potter, J. T. Boone, Thomas P. Craig, Max B. Kaufman. Forty-first Precinct—John Buchanan, Oscar Camerer, Wm. E. Woodruff, E. M. Meffert. Forty-second Precinct—Chas. Merriwether, Louis Cohen, Ed. Barbour, J. H. Sharp. Forty-third Precinct—C. L. Troxel, W. N. Blancagneil, J. C. Blancagneil, W. B. Eagles. Forty-fourth Precinct—Jacob Gast, Hume Logan, Brent Altscheler, H. Banta. Forty-fifth Precinct—I. J. Martine, R. L. Bennett, S. S. Hunter. South Louisville Precinct—C. C. Ott, Alexander Eilke, J. C. Reister, James Franklin.

Eighth Ward.

First Precinct—Otto O'Brien, Julius Munsch, C. W. Sherlock, D. Muskovitz. Second Precinct—Thomas Sayers, Nicholas Vaughan, A. F. Mertz, Jerome Clemens. Third Precinct—Fred J. Zahner, W. G. Davis, William W. Tiller, A. Fish. Fourth Precinct—Sam Mendell, John Fey, George E. Sanders, Julius Medanich. Fifth Precinct—Charles Turner, Ed. Hilpp, John P. Lupton, J. F. Dorsey. Sixth Precinct—James Mitchell, George W. Morris, Robert James, W. H. Bolla. Seventh Precinct—Silas Joseph, C. D. Cully, William J. Berry, Ike Loeb. Eighth Precinct—James H. O'Conner, John B. Green, C. E. Carroll, Nick Smith. Ninth Precinct—John H. Cowles, Philip Stevens, Ed. Lubig, Allan Jamison. Tenth Precinct—Ed. Broderick, Adam Kraushaar, J. P. Sonney, James A. Reiley.

Ninth Ward.

Eleventh Precinct—Henry Gottrath, Sol Cohen, R. D. Simpson, Philip White. Twelfth Precinct—Harry Allen, George S. Raley, William Robinson, Riney Croxton. Thirteenth Precinct—Wm. J. Stewart, S. K. Taylor, John Gazzalo, Ben J. Richardson. Fourteenth Precinct—John Raymond, James E. Roberts, Henry Jacob, Henry Kontz. Fifteenth Precinct—Albert Barfield, W. F. Stewart, Frank Nolan, F. H. Ninekirk. Sixteenth Precinct—Wm. Manle, Chas. Nelson, Allen Watson, Ed. Crawley. Seventeenth Precinct—John McDonnell, Wm. E. Doggett, Frank Connell, W. Nell. Eighteenth Precinct—James T. Carey, Grant DeMuth, John Davern, Jr., Wm. Reilly. Nineteenth Precinct—James Sexton, James Gentry, Mike Dunn, A. H. Rogers. Twentieth Precinct—Frank Halfenbridle, Robert Bogard, Wm. H. Miller, Mike Morarity.

Tenth Ward.

Twenty-first Precinct—Martin J. Norton, O. M. Watson, Ed. O'Brein, Wm. Stitzel. Twenty-second Precinct—John F. Egan, Christian Pfeiderer, H. R. Johnson, John Welch. Twenty-third Precinct—Wm. McDonald, J. B. Gibson, Frank Coyle, Wm. O'Connor. Twenty-fourth Precinct—John Mullen, R. T. Anderson, E. I. Masterson, S. W. Crites. Twenty-fifth Precinct—John S. Spier, F. T. Stourton, Al. Weidling, W. H. James. Twenty-sixth Precinct—Harry Rhodes, Henry Rhodes, W. Ryans, Peter Frick. Twenty-seventh Precinct—Sam. Rankin, W. H. Von Roenn, Alex. Burke, A. S. Johnson. Twenty-eighth Precinct—J. J. Fatherstone, Hampton Wilson, M. N. Yancey, Raymond Finnie. Twenty-ninth Precinct—Nicholas Gathof, W. Johnson, James Connaughton, John W. Adams. Thirtieth Precinct—Press L. Hamilton, George Wunchner, James A. Dorsey, Thomas H. Hicks. Thirty-first Precinct—Ralph Bristol, C. I. Caufield, E. S. Murphy, D. C. S. Wintersmith. Thirty-second Precinct—Phil Heusser, Joseph Green, Henry Johnson, Geo. A. Davisworth. Thirty-third Precinct—Jos. H. Gasser, Mike O'Neil, Ed. Fanning, W. A. Shepherd. Thirty-fourth Precinct—Brenson E. Sommers, D. W. Anderson, W. H. Dyer, John Mulaney. Thirty-fifth Precinct—John Fanning, Andrew Echols, Geo. Kinny, Walter J. Pulliam.

Eleventh Ward.

Thirty-sixth Precinct—Andy Cavanaugh, Jacob Herbold, Joseph P. Taylor, Mike C. Crawley. Thirty-seventh Precinct—Patrick Duffy, Richard Bibb, Chas. Briner, Jacob Chappel. Thirty-eighth Precinct—Henry Reiley, John DeGarmo, Herman Werneke, Mike Devanney. Thirty-ninth Precinct—Pat Thornton, Wm. Whiteney, Henry Middendorf, Sam'l Browning. Fortieth Precinct—Henry Schneider, Ben Schardine, John Boro, Joseph Sandfort. Forty-first Precinct—Ed. Slater, David Stern-

berg, Walter Smith, Emanuel Sternberg. Forty-second Precinct —Charles Meyer, Louis Schuff, E. Dietzman, Gus Groene. Forty-third Precinct—C. C. Carlisle, David McClure, Chas. Craft, Henry Drake. Forty-fourth Precinct—John M. Kremer, W. G. Smith, George Lamb, Joseph Jacob. Forty-fifth Precinct—Mike Grasmich, W. A. Hutchins, Thos. Nevitt, Geo. W. McClelland. First Precinct—Pat Welsh, Jacob Marker, Thos. J. Niles, James Mackey. Second Precinct—Pete Mason, Ed. Liebst, F. M. Miller, W. Strobel. Third Precinct—George Albert, Jos. T. Smith, Wm. M. Watson, Louis Layer. Fourth Precinct—Lobe Thompson, W. R. Hardin, Wm. Lyons, Wm. E. Mullen. Fifth Precinct—Wm. Ecker, James Puff, Chas. J. Sells, J. T. Killmeier. Sixth Precinct Alex S. Bishoff, R. A. Rice, J. J. Hickey, S. Schoening. Seventh Precinct—C. A. Hill, Geo. W. Beeler, Geo. C. Gibbs, Louis Ebberhardt. Eighth Precinct—Wm. Kirley—James McWhorter, John Purphy, Abe Fuelds. Ninth Precinct—Dan Brennen, Samuel Ward, A. T. Thompson, Andy Kast. Tenth Precinct—Tim Mulverhill, T. L. Klingman, Charles Plamp, Wm. Knoblock. Eleventh Precinct—Jesse Brown, Carl Zoeller, Ebner Boyer, Geo. Coyle. Twelfth Precinct—I. E. Habich, John Debor, Chas. Lutz, V. E. Dupre. Thirteenth Precinct—J. M. Beeler, John Harlamart, C. G. Gunther, Fred Bruder. Fourteenth Precinct—Chas. Voelker, Henry Hoffman, Joseph Bonn, Chas. H. Rennekee. Fifteenth Precinct—Andy Phister, Price Wolf, Henry Charlton, Louis Bohn, Fred Panke.

Twelfth Ward.

Sixteenth Precinct—James Silk, James T. Shade, John Nelligan, John Wetzelberger. Seventeenth Precinct—Wm. Sullivan, J. C. McKelvey, George Cornell, Pat Clark. Eighteenth Precinct —Wm. Bertelkamp, J. W. Blunk, Louis McCleery, W. H. Nedy. Nineteenth Precinct—Wm. Fichman, Levy H. Roberts, Jacob Foos, Ed. Fossee. Twentieth Precinct—Wm. Durbeck, C. C. Jones, Lodia Unclebach, Charles E. Jones. Twenty-first Precinct —Albert Unclebach, J. H. Wagoner, Wm. Peak, John C. Oestrich. Twenty-second Precinct—Chas. Schreiber, R. D. Newbill, Frank Bertelkamp, George Dumeyer. Twenty-third Precinct—Robert Clark, J. W. Ellis, W. O. Jones, Chas. Allen. Twenty-fourth Precinct—Jack Small, John Welker, Wm. Kreig, W. R. Scott. Twenty-fifth Precinct—Dennis McHugh, Wm. Harrington, T. J. Vincent, Chas. Hoban. Twenty-sixth Precinct—John Shelley, W. T. Leach, C. P. Johnson, John A. Lonnon. Twenty-seventh Precinct—M. A. David, S. J. Lorch, Herman Becker, John Kantzler, Wm. Carlett. Twenty-eighth Precinct—N. Ryan, G. A. Miller, Harvey Brown, Chas. Stockwell. Twenty-ninth Precinct—Joseph Huffaker, Louis Seegar, J. Wallace Hickman, Chas. Pfeiffer. Thirtieth Precinct—E. D. Stinson, W. H. Clark, Marshall Hopkins, G. J. Marrett. Thirty-first Precinct—Ed. Ransdale, Wm. Liebe-

gott, S. T. Ray, John W. Watson. Thirty-second Precinct—Thomas Feeley, J. H. Woods, Jas. DeVore, Henry Hertle. Thirty-third Precinct—W. M. Weir, R. P. Clark, B. F. Tyler, Wm. Ogle. Thirty-fourth Precinct—D. F. Nehan, Chas. C. Hafling, Robert Lynch, W. H. Silvernagel. Thirty-fifth Precinct—B. B. Jobson, Jos. T. Smith, Wm. M. Watson, Louis Layer. Thirty-sixth Precinct—John Fricht, Fred Kneisel, H. J. Roehrig, F. H. Kappa. Thirty-seventh Precinct—M. Hannon, N. B. Nicks, James Harris, Louis V. Deeg. Thirty-eighth Precinct—Wm. Snyder, C. Bornwasser, Nick Wittry, Daniel Quillman. Thirty-ninth Precinct—Martin Ryan, J. W. Pankey, Pearcy Smith, Robert Wald. Fortieth Precinct—P. H. Morel, W. F. Murphy, V. Kinberger, R. H. Carruther. Forty-first Precinct—Harry Yarba, John W. Neville, A. S. Allen, James Simms.

County.

Albemarle Precinct—Henry Reinstedtler, George Frantzman, Charles P. Johnson, Anton Seibert. Anchorage Precinct—J. D. Barbour, E. D. Hobbs, John J. Barrett, J. W. Moore. Boston Precinct—James S. Johnson, M. A. Snyder, W. W. Melone, M. T. Davenport. Cross Roads Precinct—L. J. Steivers, John Kaufman, John Cahill, C. M. Maple. Fern Creek Precinct—S. A. Stivers, Bryant Williams, Adam Koehler, H. A. Cartwright. Fairmount Precinct—John Farmer, J. A. Stout, Robert Foster, J. B. Long. Gilman's Precinct—Robert W. Herr, Chas. Cammack, J. H. Ruddy, Chas. Neuner. Highland Park Precinct — John Jones, Louis Ernest, Ben Rogers, Henry Churchman. Hoke Precinct—Chas. Hunsinger, James Oldham, Chas. Scoggin, John Schneider. Harrod's Creek Precinct — Frank Hartsfield, Wm. Wheeler, F. S. Barbous, John Hartin. Fisherville Precinct—James Carmichel, Wm. Ramsey, O. T. Carpenter, Jef Waters. Indian Hill Precinct—Sam'l S. English, Robert Lewis, George Stiltz, W. S. Adams, R. J. Winn. Jeffersontown Precinct—James R. Davis, E. E. Goose, Dr. David Floor, W. O. Wiler. Meadow Lawn Precinct—Wm. Camp, John McDaniels, George Griffiths, L. A. McCullough. Middletown Precinct—John Guthrie, J. L. Robb, J. W. Urton, W. R. Wood. Malott Precinct—J. W. Yeager, E. E. Jean, Tenor Hills, W. R. Davis. O'Bannon Precinct — Dave Stove, J. H. Hampton, J. W. Coleman, Wm. Hefer. Robb's Precinct—H. D. Robb, H. D. Prewitt, Will Foster, Jeff McCawley. Shively's Precinct—George Smoot, J. B. Watson, T. J. Swindler, John Guttermuth. Schardein's Precinct—Sam'l J. Kennedy, Paul Seng, L. B. Klinger, Wm. Weems. Spring Dale Precinct—Frank Littrell, Thos. K. Tyler, Ed. Reiling, Cyrus Hurt. Spring Garden Precinct—John C. Pearce, Jake Adams, John Wiley, Herman Bodeman. Two Mile House Precinct—Ben C. Tolbert, B. F. Whitstein, H. J. Witterrauer, Henry Kistner. West Louisville — Tony Landenwitch, Wm. Heckel, Fred Riesenmenger, George Brown.

Woods Precinct — Basil Ferguson, Eli D. Farmer, S. R. Armstrong, Johnson Lengnere. Valley Precinct—Jenkins Swindler, Frank H. Dodge, Clint Waller, White Stewart. Crescent Hill Precinct—Wm. Bullitt, Henry Heick, Chas. Hodge,

Defendants,

to answer to a petition against them in our Jefferson Circuit Court by John Young Brown and warn them that upon failure so to for twenty days after service hereof, if in Jefferson county, or for thirty days if elsewhere in the State, judgment may be rendered by default, or answer compelled, or proof taken at the petitioner's option; and make due return thereof within sixty days from date hereof.

Witness, John H. Page, Clerk of said Court, this 7th day of November, 1899.

The petition is endorsed as follows: John Young Brown vs. Charles P. Weaver, etc. Petition in Equity, 1899, Nov. 7th. Petition filed, summons and 20 copies issued; order of injunction awarded, bond executed and filed. J. T. O'Neal, surety. Injunction and 200 copies.

Attest:

JOHN H. PAGE, Clerk,
By W. D. REED, D. C.

By Judge Yost. Have you read the petition?

By Mr. Kohn. I haven't introduced it. We are complaining of mandatory injunctions and mandatory summonses, and those orders have been made. Now, if you want the thing to go without the petition, let it go at that. If you want the petition read, read it.

By Judge Yost. The first question asked the witness was, "Have you the record here," and they introduced the whole record, and we want it read.

By Chairman Hickman. The Board understands that the petition is not offered at this time?

By Mr. Kohn. No, sir.

By Chairman Hickman. Proceed with the testimony.

Q. Have you the record in the case of John Marshall vs. Weaver and others?

A. With the exception of what is in the order book.

Q. I will ask you if a similar petition, and similar orders were filed in that case?

Objected to.

A. Well, they were on the same order——

Q. I will ask you then if that petition was filed?

A. This petition was filed—yes, sir.

Q. When was it filed?

A. On the same date.

Q. What time; after or before this petition——

A. Well, the hour is not endorsed on here, but I know it was after.

Q. Now, I will ask you just to show the order of injunction and bond in that case?

A. Well, the bond is about the same as the other, with the exception of the list.

Q. It is printed,—the names are printed the same as the other?

A. Yes, sir. Now, the order——

Q. Same kind of form, isn't it?

A. No, sir; I don't think it is—much shorter.

Q. Now, have you also the injunction suit against Bogarth by John Marshall?

A. There is some such suit there—yes, sir.

Q. Will you please just read the order of injunction granted by the court in that case?

At a court held on November 7th, 1899, the following order was entered, viz.:

JEFFERSON CIRCUIT COURT.

John Young Brown, Plaintiff,
vs. ORDER.
Charles P. Weaver, et al, Defendants.

On motion of plaintiff, John Young Brown, in the above styled action it is ordered by the Court as follows, viz.:

The following defendants, being officers of election for the following precincts in Jefferson County, Kentucky, viz.:

(The names of the officers then following, as appear on pages 85 to 101, inclusive) as officers of the election to be held on November 7, 1899, in the County of Jefferson, including the City of Louisville, in the State of Kentucky, or any persons who may act as such officers, are enjoined and commanded to admit to each of the several voting places, at which said defendant officers or others shall severally officiate on said day, an Inspector representing the Honest Election Democratic Party, provided he produce a written or printed appointment signed by J. E. Wright, Chairman of the Committee of Honest Election Democratic Party; which admission shall be as soon as the polls close on said day, and whenever thereafter said Inspector shall demand admission; and to permit him to remain and witness and inspect the counting and certification of the vote at such polling place, and to give to him on his demand a duplicate, properly signed, of the certificate as to the vote at such precinct; and in all other respects to recognize and treat him as a lawful inspector of elections under the law, and accord to him all the rights which the law gives to inspectors of elections.

And the defendants, Chas. P. Weaver, as Mayor of Louisville, and W. L. Lyons, Edward Tierney and Lee Suter, constituting the Board of Public Safety of Louisville, are commanded and enjoined not to give, or cause or allow to be given, to any policeman of the said city or other person any order to interfere with any such inspector as is above described when entering or attempting to enter such voting place, or performing or attempting to perform any of his duties as such inspector; and if any such order has been given they are commanded to revoke the same or cause it to be revoked, and cause such policeman or other person to be notified of such revocation.

And the defendant, Jacob H. Haager, as Chief of Police of the said city, is hereby enjoined and commanded to instruct the policemen of said city that the inspectors aforesaid, viz., the inspectors representing the Honest Election League Democratic Party, and having appointments, as such inspectors, signed by said J. E. Wright, Chairman as aforesaid, have a right to enter the said voting places and witness and inspect the count of the vote therein, and must not be interfered with in the exercise of such right.

The amount of the injunction bond herein is fixed at $1,000.

On November 14, 1899, at or about the hour of ten o'clock a. m., in the court room of that division of the Jefferson Circuit Court to which this cause shall then have been assigned, or, if not assigned to any division, then in the Court room of the Law and Equity Division of said Court, the plaintiff in the above entitled cause will move the Court to grant an injunction pursuant to the prayer of his petition herein, and the foregoing order shall remain in full force until such motion shall be heard and determined.

Defendants and all persons are warned that this order is binding upon them from the time they are informed thereof.

Q. Now, is there in that record a process of contempt against the officers for not signing the certificate by reason of that order of injunction, and an order based upon that; if so, read it?

Objected to, overruled.

Governor Bradley here argued the question of reading the petition in the case of Brown vs. Weaver at this point.

By Mr. Kohn. If counsel insist on the petition being read, I will read it.

By Judge Yost. Yes, sir; we insist on its being read.

Mr. Kohn then read the said order as follows:

Jefferson Circuit Court.

John Young Brown, Plaintiff,
vs.
Charles P. Weaver, Mayor of the City of Louisville, W. L. Lyons, Edward Tierney and Lee Suter, Members of the Board of Public Safety of said City, Jacob H. Haager, Chief of Police of said City, and the following Persons as Officers of Election for Jefferson County, at the following Precincts, viz.: Defendants. } Petition in Equity.

(And the names of the officers then follow as appear on pages 85 to 101 inclusive.)

Plaintiff, John Young Brown, says that defendant, Charles P. Weaver, is Mayor of the city of Louisville; that defendants W. L. Lyons, Edward Tierney and Lee Suter constitute the Board of Public Safety of said city; that Jacob H. Haagar is its Chief of Police; and that the other defendants named in the caption are the election officers of Jefferson County, including said city.

Plaintiff says that he is a candidate for the office of Governor of Kentucky which is to be filled by the vote of the people of the State at the election to be held on November 7th, 1899.

More than one thousand electors of the said State, all duly qualified to vote for plaintiff for the office aforesaid at the election aforesaid did heretofore in writing, signed by each of said persons petition the County Clerk of each county in said State, including the County of Jefferson, to print on the official ballots, to be used at said election, the name of plaintiff as a candidate for the office aforesaid, stating in said petition plaintiff's name and residence, that he is legally qualified to hold said office, that the subscribers desired and were qualified to vote for plaintiff, and designating Honest Election Democratic Party as the name of the party which plaintiff represents, together with a figure or device, viz.: the pictures of John Young Brown and P. P. Johnston by which plaintiff and those associated with him should be designated on the ballots.

Other candidates for other offices to be filled by the electors of the entire State, no two candidates however being named for the same office, were also included in said petitions, and appropriate allegations made as to them as required by law, petitioning that the names of such candidates be also placed on the ballots aforesaid under the party name and device aforesaid.

Said petitions of nomination were filed with the Secretary of State of Kentucky not more than sixty days and not less than thirty days before November 7th, 1899.

Not less than twenty days before November 7th, 1899, the said Secretary of State certified to the Clerk of the Jefferson County (Kentucky) Court the name and place of residence of plaintiff and of the other persons included in said petitions with him, as specified in said petitions, and designated therein the device aforesaid under which plaintiff and the other said candidates in the group with him, should be printed.

Thereafter and in accordance with said certificate the said Clerk of the Jefferson County Court did cause the name of plaintiff and the other candidates in the group with him to be printed on the official ballots, under the party name and device aforesaid, as candidates for the several offices designated in said petition, including the office of Governor; and the name of plaintiff, as candidate for Governor, and of the other said candidates in the group with him, do now appear, and will on said election day appear on said official ballots in manner and form as aforesaid; and the said ticket, viz.: the aforesaid group of candidates of which plaintiff is one, will be voted for at the election aforesaid.

Plaintiff says furthermore that the party composed of the petitioners aforesaid, and other supporters and followers of plaintiff and the other candidates on the said ticket with him has a County Executive Committee in Jefferson county, Kentucky, of which J. E. Wright is the Chairman, and said Committee has duly appointed a suitable person to be present at, witness and inspect the counting of the votes in each precinct in said County as the representative of the said party; and has authorized said J. E. Wright to issue and sign as Chairman, proper credentials or evidences of said appointments to each of said appointees, which he has done.

Plaintiff says that it is of vital importance to him and other candidates in the group with him, and to the party aforesaid supporting him, to have said appointees, commonly called inspectors, present as their representatives at, and to witness and inspect the counting of the votes in each such precinct.

The plaintiff says that County Board of Election Commissioners for Jefferson county, Kentucky, acting by a majority, against the objection and protest of Commissioner Barr, has issued written instructions to all the officers of election who are to act as such on November 7th, 1899, instructing them in effect to admit as inspectors in the voting places on said day, only the inspectors appointed by the party supporting one W. S. Taylor for Governor, and of the party supporting one William Goebel for Governor, and not to admit any inspectors or representatives of plaintiff or the party aforesaid supporting him and the group of candidates associated with him.

And plaintiff says that unless controlled by the order of this Court all said election officers will obey said instructions, and will refuse to admit into any of the voting places on said election day any inspector as a representative of the party supporting plaintiff or the group aforesaid.

And further plaintiff fears and alleges that said Mayor and Board of Public Safety and Chief of Police either have issued, or will issue, or cause to be issued and enforced, unless restrained by this Court, instructions to the police of the city not to allow any inspector of the Honest Election Democratic Party to enter the voting places on election day, and to arrest any that attempt to do so; and said police will obey said instructions.

The injunction herein sought has never been refused by any Court or officer. Irreparable injury will result to plaintiff from the delay of giving notice of an application for the injunction herein sought.

Wherefore, plaintiff prays for an injunction commanding all of the defendants herein who are named as officers of election and all other persons who may serve as such officers, to admit to the voting places as soon as the polls close at four o'clock on November 7th, 1899, one person as inspector at each voting place as representative of the said Honest Election Democratic party, having with him an appointment in writing signed by said J. E. Wright; and commanding Charles P. Weaver as Mayor of Louisville, and W. L. Lyons and Edward Tierney and Lee Suter as constituting the Board of Public Safety of Louisville not to give or allow to be given to the policeman or any of them of the said city an order or orders to arrest any such inspector for entering or endeavoring to enter into a voting place for which he has been appointed inspector as aforesaid, or otherwise interfere with him in the exercise of his rights; and commanding Joseph H. Haager as Chief of Police of said City, to instruct the policemen of said city that said inspectors have a right to enter said voting places and there remain while the vote is being counted and must not be interfered with in doing so.

Plaintiff prays also for a temporary order to the foregoing effect; and for his costs and any relief to which he may appear to be entitled.

W. H. SMITH AND J. T. O'NEAL,
Attorneys for Plaintiff.

John Young Brown says that he is the plaintiff in the foregoing action, and believes the statements contained in the foregoing petition are true.

John Young Brown.

Subscribed and sworn to before me by John Young Brown, this November 6th, 1899. My commission expires March 2, 1902.

Wilkins G. Anderson,
Notary Public, Jefferson County, Kentucky.

Q. Have you also the record in the case of Marshall vs. Caruth and others?

A. Yes, sir.

Q. Is the record there?

A. Yes, sir.

Q. And the order against the other officers—against Bogarth, &c.?

A. Two suits, one against Bogarth and the other against Bozarth.

Q. Have you the injunction order in that case?

A. I think I have—yes, sir. I have the order, and it reads as follows:

Jefferson Circuit Court.

John Marshall, ... Plaintiff,

vs.

Robert C. Bogarth, John Hines, W. A. Edwards and W. H. Miller, ... Defendants.

On motion of the plaintiff, John Marshall, and upon the averments of the petition herein, it is ordered by the Court that the defendants, Robert G. Bogarth and John Hones, as Judges, and W. A. Edwards as Clerk, and W. H. Miller as Sheriff of the election held in the 20th Precinct of the 9th Ward in the city of Louisville, Jefferson County, Kentucky, on the 7th day of November, 1899, be and they are each hereby enjoined and restrained from failing and refusing to assemble as election officers aforesaid at the County Court Clerk's office of Jefferson County, in the city of Louisville, at ten o'clock A. M. on Saturday, November 18, 1899, or as soon thereafter as they can assemble, and then and there count the ballots deposited by the voters of said precinct in the ballot box used in said precinct which was returned by them to the Clerk of the Jefferson County Court, and to certify in writing signed by them according to law, the result of said election at said precinct, and from failing and refusing to deliver such certification to the Clerk of the Jefferson County Court. On the 27th day of November, 1899, at or about the hour of ten o'clock A. M. in the court room of that division of the Jefferson Circuit Court to which this action may be assigned, or if not then assigned to any division, then in the court room of the Law and Equity Division of said Court, the plaintiff will move the court to grant an injunction in pursuance of the prayer of his petition.

The injunction bond is fixed at $500.00.

STERLING B. TONEY, Judge.

I was mistaken about that—being one against Bozarth and one against Bogarth. There is one suit against Bogarth.

And thereupon the Board adjourned until Wednesday, January 17, 1900, to 2 o'clock P. M.

FRANKFORT, KENTUCKY, January 17, 1900.

The Board met pursuant to adjournment at 2 o'clock P. M., in the City Hall, the landlord of the Capital Hotel having refused the Board the use of the room in said hotel any longer.

R. B. Bradley, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. Please state your name and place of residence?

A. R. B. Bradley; Earlington, Hopkins County, Kentucky.

Q. What is your occupation?

A. I am an attorney-at-law, sir.

Q. How long have you lived in Hopkins County, Mr. Bradley?

A. All my life.

Q. Are you acquainted with the people of Hopkins County, and the Earlington district?

A. Yes, sir; I think I am.

Q. How far is Earlington from Madisonville?

A. Four miles.

Q. Madisonville is the county seat, is it not?

A. Yes, sir.

Q. Is Earlington upon any railroad; if so, upon what railroad?

A. Yes, sir; on the L. & N. Railroad.

Q. How far is Earlington from the Ohio River, and Henderson?

A. It is forty-two miles from the Ohio River.

Q. Did you make an examination of the list of the voters in the Earlington Precinct or Precincts, who voted at the last election?

A. Yes, sir; I did.

Q. Did you find any persons named as voters there that you were not acquainted with?

A. Yes, sir.

Q. Or whom you didn't know anything about?

A. I did.

Q. How many?

Objected to, as the list itself is the best evidence.

By Mr. Hickman. I think the gentleman is correct.

By a member. Mr. Bradley, have you any knowledge of the voters who voted in that precinct?

A. Yes sir; I have.

Q. From what did you obtain that knowledge?

A. Do you mean, how do I know those people? Do you mean that?

Q. The first question was, do you know what voters were allowed to vote in that precinct, the names of persons?

A. Yes sir.

Q. How did you obtain the knowledge of that?

A. I obtained it from the stubs of the poll books in the County Clerk's office.

Mr. McQuown resumes.

Q. Do you know any of those persons who were non-residents of the State?

A. I knew three of them.

Q. Where did they reside, and who were they?

A. One lives in Nashville, Tenn., by the name of James Sparrow; and one who lives in Howell, Ind., by the name of Jack Covert. I also know Warren Campbell; he makes his headquarters at Howell, Ind. I would not state positively whether he lives there or not.

Q. What business were those men engaged in at the time of the election?

A. Mr. Sparrow is a conductor on the L. & N. Railroad; Mr. Campbell and Mr. Covert are engineers on the L. & N. Railroad.

Q. How many was it—176, I believe, you say in all, that you don't know as residents of that place?

A. Yes sir; there are 176 that were not listed by the Assessor.

Q. Did you make a canvass of the County at the election for County Attorney?

A. Yes sir.

Q. You are well acquainted, or not, in that precinct and district?

A. Well, I am very well acquainted with the Earlington Precinct.

Cross-examined by Mr. Sweeney.

Q. You have given us the name of three men whom you state did not reside in that precinct; do you know the name of any voters who voted there, that did not reside there?

A. Why, I do not remember the names. I did take them down, but I haven't got them.

Q. You haven't them with you?

A. No, sir.

Q. Do you know how these three men voted, whose names you have given?

A. No, sir; I do not.

Q. You don't know what ticket they voted?

A. No, sir.

Q. Isn't it a fact that a great many people in your county, like they do in other counties of the State, reside in different counties, but claim their voting place at their own homes, and go back there to vote?

A. Well, sir, this man Covert that I speak of—I will answer you in this way—this man Covert that I speak of, I don't think he ever did live in the State of Kentucky.

Q. We didn't ask you what you think about it, we want you to state facts?

A. Well, then, I do know he did vote in Indiana in the last twelve months.

Q. How do you know that?

A. A party told me that; the City Marshal.

Q. You know it by hearsay?

A. Yes, sir.

Q. That is the only way, that you know it?

A. I have seen his house, and know where he lives in Howell, Indiana.

Q. Do you know where he ever voted there?

A. No, sir.

Q. All you know about it is what you know from hearsay?

A. All I know is what the marshal told me.

Objected to, and council asks to have that portion of the witness' answer, which is only hearsay stricken from the record, because it is clearly incompetent.

Overruled and exception.

Q. What sized place is Earlington?

A. Earlington is a small place; I suppose a thousand or twelve hundred inhabitants.

Q. Mining town?

A. Yes, sir.

Q. People are coming and going frequently?

A. I could not tell you that.

Q. Moving in and moving out; great many miners there, are there not?

A. Yes, sir; a great many miners there.

Q. How far do you live from it?

A. Four miles.

Q. You were, I believe you said, County Clerk?

A. No, sir; I did not.

Q. County Attorney, was it?

A. No, sir; I said I was an attorney.

Q. I thought you said you held some official position?

A. No, sir.

Q. How long has it been since you were over there?

A. Which, at Earlington?

Q. Yes, sir.

A. Oh, I am there once or twice every week.

Q. And you know everybody that lives in the precinct?

A. Oh, I am well acquainted in that precinct.

Q. The only information that you have is the information that you received from the stub-books as to the vote there?

A. Yes, sir.

Q. Have you those stub-books with you?

A. No, sir.

Q. Will you file them and make them a part of this your deposition, or your testimony?

A. Why, I don't have any control over the stub-books, Mr. Sweeny; the County Clerk probably would do that.

Q. You say that you made a list of how many?

A. 176.

Q. And you furnish us with a list of only three?

A. Those were the only ones I knew.

Q. And you don't know how they voted?

A. Certainly not.

Re-direct examination by Mr. McQuown.

Q. You say that that is a mining town?

A. Yes, sir.

Q. Has there been any boom or sudden increase in population in that town, or surrounding country, in the last few years?

A. No, sir; none that I know of. I don't think there has been—

Q. What was the vote cast there at this last election—how many?

A. 686 votes cast at the last election.

Q. What was the vote cast in 1898—1897 or 8?

A. It was 267.

Q. This year it got to how much?

A. 684 in this election; and the 1898 election there was 267 votes polled.

Q. How about the 1896 election?

A. I don't know exactly how many is polled. I did know, but I have forgotten; but not near as many as there was in this election.

Q. Do you know who carried that precinct?

A. Yes, sir; I do.

Q. For Governor?

A. Yes, sir.

Q. Who?

A. Mr. Taylor.

Q. How much was his majority?

A. I could not state the exact majority.

Q. By Mr. James. Well, about what majority?

A. I think it was over 200.

Q. By Mr. Yost. What year was that Mr. Bradley; I didn't catch that?

A. This year, 1899.

Q. By Mr. James. For Taylor, about 200 majority?

A. Yes, sir; Mr. Brayn carried it.

Re-cross examined by Mr. Sweeny.

Q. You have said that you had a list of the exact number, I can't recall right now—of 176 names who voted in that precinct, who did not reside there. Will you furnish to this committee a list of these names?

A. I gave it to a gentleman that said he wanted to carry it before the Grand Jury, and I can not furnish it.

Q. Can't you get it again, a copy of it?

A. I don't know whether I can or not.

Q. Can't you get it from the stub-book?

A. I expect I can.

Q. How did you get it in the start?

A. From the stub-book.

Q. You can get it again then, can't you?

A. Yes; so can you.

Q. I don't know about it; I don't know the people.

A. I supoose the Clerk would let anybody take it, who wants it.

Q. Will you file before this Committee a list of those names as a part of your testimony?

A. If the Contest Board requires me to do it, I will.

Q. Will you do it, Mr. Bradley?

A. I will, if the Board requires me to do it.

Q. And you will not if the Board does not require you to?

By a member of the Board. That question is objected to on the part of the Board because no such list is proffered.

By Mr. Sweeny. No, I understand it is not. The witness answers that he will furnish that list if the Board requires it.

By a member of the Board. That is a private memorandum of the witness.

By Judge Yost. Does the member pretend to say that a witness can testify from a private memorandum and not be required to file that memorandum?

By the Member. He can refresh his memory from it.

Q. (By Judge Yost.) Now will you furnish it, Mr. Bradley?

A. I will furnish it if the Board requires it.

Q. Will you whether the Board requires it, or not?

A. No, sir; I will not.

Q. (Mr. Sweeny resumes.) Then you come here and tell this Committee that is investigating for the purpose of finding out as to whether, or not, illegal votes were cast in this election, and you say that you made a list, and are well acquainted with that precinct, and the people who live in it—that you made a list of 176 voters, and you are only able to give this Board the names of three. That is the testimony that you want to leave before this Committee? How did you know they were illegal voters?

A. Because I knew these parties.

Q. What parties?

A. The three that I knew—that I have named.

Q. Out of 176?

A. I compared it with the Assessor's books, and they were not listed by the Assessor this last year; and they have to live in the precinct sixty days, commencing the 7th of September; the election was the 7th of November.

Q. (By a member of the Board.) If those remaining names on that list had been residents of that precinct, is it likely you would have known that?

A. I would know more than I did know.

R. C. Minnix, a witness, duly sworn, and examined by Mr. Mckeown, for the contestant, deposed as follows:

Q. What is your name?

A. R. C. Minnix.

Q. Where do you reside?

A. Magoffin County.

Q. You hold any official position there?

A. I do.

Q. What is it?

A. Clerk of the County Court.

Q. Were you such at and before the time of the November election, 1899?

A. I was.

Q. Were there any stub books spoiled or unused ballots left in your—placed in your custody after that election?

A. Yes, sir.

Q. Have you them with you?

A. I have.

Q. Will you produce them; have you the record there?

A. Yes, sir.

Q. Mr. Minix, have you some of those ballots, unused or questioned or spoiled ballots?

A. Yes, sir.

Q. Will you exhibit them; this is a book containing some that were unused, is it, in that election?

A. Yes, sir.

Q. Did you as County Clerk have the ballots of the county, for the county, printed for that election in 1899, November?

A. I did, yes, sir.

Q. Where did you have them printed?

A. Catlettsburg.

Q. By what printer or establishment?

A. Patton, I believe; Will Patton.

Q. Was it the Paw-Paw Printing Office?

A. Yes, sir; I believe that is the office.

Q. Were they all printed upon the same paper so far as you know or observed?

A. Yes, sir.

Q. And this is a sample of it?

A. Yes, sir, that is a part of one—

Q. Were the same kind of ballots furnished to the officers of all the precincts of the county?

A. Yes, sir.

Objected to; objection overruled.

Q. Examine that ballot and see if that is not also one of the ballots that was used or printed, caused to be printed by you for use in Magoffin county at the last election?

A. Well, I don't know about that.

Q. Mr. Minix, will you then tear off one of these, if you don't know whether that is one that was used, and let us use it as a sample?

A. I don't know about the tearing off of this.

(The same was torn off and passed up and marked as an exhibit.)

Q. What was the result of the election in that county for Governor and for Lieutenant Governor?

A. I don't remember exactly now.

Q. What political party are you a member of, Mr. Minix?

A. Republican party.

(Another ballot was detached for use of attorneys on the other side.)

Cross-examination by Mr. Sweeney.

Q. How long have you been clerk of that court?

A. Two years.

Q. In procuring your ballots for election purposes, you made an honest endeavor to procure good, straight ballots as required by the law?

A. I did.

Q. And when these ballots were submitted to you, you regarded them as amply sufficient?

A. Yes, sir.

Objected to; but objection was afterwards withdrawn, the Chairman having stated it was a matter of opinion.

Q. You made an honest effort to procure proper ballots?

A. Yes, sir.

Q. You heard no complaint in your county about the ballots, did you, on the day of the election?

Objected to; objection overruled.

Q. Did you hear any complaint on the day of the election about the ballots?

A. Yes, sir.

Q. State what it was; state the complaint that you heard?

A. I heard somebody speak about the ballots when I went in to vote, that they were pretty thin.

Q. What was the complaint?

A. Said they were pretty thin.

Q. Was there anything irregular in the devices on the ballot——

Mr. Bradley. Any ballots sealed in an envelope or all the ballots that were voted on that day sealed in an envelope and returned to your office upon the ground that the ballots voted were too thin or that there was anything wrong about the ballots?

A. No, sir.

Redirect Examination by Mr. McEwing.

Q. How many times did you fold your ballot when you voted?

A. Three times, I believe.

A Committeeman. Who printed those ballots for you?

A. Pau-Paw Printing Company, Catlettsburg.

J. G. Arnett, a witness, being duly sworn, and examined by Mr. McQuown:

Q. Where do you reside?

A. Magoffin County, Sublett.

Q. Were you an officer of any kind in the late election of November, 1899?

A. Yes, sir, I was.

Q. What precinct?

A. Meddis Precinct, No. 8, I believe.

Q. In Magoffin County?

A. Yes, sir.

Q. What sort of ballots were used in the election at your precinct in that county?

A. Well, I reckon they are what you call tissue ballots.

Q. Examine this ballot and see if you recognize that as one of the same kind of ballots that was used at your precinct?

A. Yes, sir, I think this is the same kind of ballot, the same kind.

Q. When the election was being held, did you or to your knowledge the other officers observe the way the votes were cast, and, if so, tell how you observed it?

A. Well, you could see the stencilling under these devices here, and the thing that called our attention to this fact, at the time of taking the vote, some of the voters would bring the ballot back in this shape, sometimes they were doubled as this is, doubled this way, when they were this way, of course they couldn't help to see, couldn't help from seeing how the vote had been cast, if they looked at the ballot.

Q. Did you in fact see how the votes were cast from the back of the ballot?

A. A great many of them, yes, sir.

Q. Do you know whether the other officers, or any of them, saw how those votes were cast from the back of the ballot?

A. They could whenever they had a mind to do so.

Q. Was anything said there at the time between you and them in reference to how those ballots were being—the votes were being cast?

A. Well, in counting the ballots it was noticed perhaps more than at any other time.

Q. In counting them, how did you count them, look at the face or the back of the ballots?

A. Well, we counted I don't know how many, but several ballots, and I took them out the box myself, and we counted a great many ballots just in this way, didn't undouble them any more than that (indicating).

Q. You didn't look at the face at all?

A. Didn't open them and look at the face, no, sir.

Q. You saw how the vote was from the back of the ballot?

A. Yes, sir, didn't have to undouble them. I don't know how many, we counted several that way.

Q. You speak that you took the ballot out of the box in this way; what way do you mean—describe it?

A. Just as this.

Q. How is it folded?

A. They were folded—the judges when they——

Q. Once, twice or three times?

A. The Judges folded them—well, I folded them myself this way.

Q. Once, twice or three times?

A. This is three times, I reckon, just as this is doubled, you count that three times, I reckon. The voters, a great many of them, would bring them doubled this way.

Q. Once?

A. Yes, sir.

Q. You were enabled when they were doubled either once or folded three times, as you describe it, to distinguish how the vote was cast from the back of the ballot?

A. Well, we could easily tell when they were just doubled this way, and then sometimes it would take a little closer observation to tell when they were doubled this way, sometimes you couldn't——

Q. While the election was in progress, did any of the election officers, after any persons would vote, go and report to persons on the outside how they had voted?

A. Well, I saw some parties talking—I say I saw some, I don't remember the parties now—I remember, I don't know how many times, but some of the parties present going to the windows and speaking to parties outside; I don't know whether that was their business or not.

Q. I will ask you this question, if when the voter presented a ballot to you or to the other officers, after a voter came from the booth, if you could readily distinguish how he had voted from the back of the ballot when it was folded?

A. Yes, sir, when we wanted to look at it we could, and tell.

Q. Whenever you wanted to look at it, you could do it?

A. Yes, sir, and tell how the vote was cast; of course not if he was in a hurry and put the ballot in, but if he wanted to look at it he could tell how the vote was.

Cross-examination by Mr. Sweeney.

Q. How could you tell how the voter had voted down the column?

A. You couldn't tell about that, I don't know that my attention was called to that part of it, looking down the column, just looking you could see under the devices.

Q. How did you manage to count the ballots without looking at them; you say you counted some of them that way. How did you manage to count them?

A. We could when we looked.

Q. When you looked?

A. When we looked down the column.

Q. You were watching then, you were an officer of the election?

A. Yes, sir.

Q. And you were watching to see how the voters voted?

A. I couldn't help it when they were doubled up.

Q. In other words, if I understand you correctly, when a ballot was properly folded, as the law requires, you couldn't tell by a casual glance at the ballot?

A. Well, the side that was next, you could see the device on that, you couldn't see all the devices, but if it happened to be—was folded on the outside, you could readily see it, you couldn't help it.

Q. If you examined it; if the ballot was properly folded as the law requires, you couldn't distinguish or tell how the voter had voted, could you, by a casual observation of it?

A. You would have to look at it more closely; you couldn't see all of the devices when it was properly done up I believe you would have to look at it closer.

Q. Then you undertake to say that you as an officer of the election counted a lot of ballots without opening the ballots to see how they were voted?

A. This is—yes, sir, we counted, opened in that manner, counted several ballots without unfolding them further.

Q. Without going down further?

A. Yes, sir, you could see stencilling all down here anywhere without unfolding it clear down the line, if you would want to do it.

Q. You didn't take the trouble to unfold them?

A. No, sir, and the clerk of our election sat over on my right, and the sheriff of our election still sat on his right which made him about seven feet from me. I took the ballots out of the box and held them up this way, and he could tell from where he was how the votes had been cast by seeing the stencil under these devices. Finally he suggested for fear there would be a mistake made that we undouble them.

Q. How would you recognize that ballot as being one of them?

A. I see our County Court Clerk's name here endorsed on the back of it.

Q. You recognize it by the name and not from the paper itself?

A. By his name and by its being on the same quality exactly.

Q. What precinct do you say you were an officer at?

A. Meddis precinct.

Q. Is that Republican or Democratic?

A. It is Republican.

Q. How much is the usual Republican majority there?

A. Well, it varies.

Q. About the usual Republican majority?

A. Well, it varies so, I guess it is about—well from along in the neighborhood of thirty, thirty-five, sometimes more, may be, and sometimes less.

Q. How did it go this time? What was the Republican majority, if you know, there this time?

A. I don't distinctly remember.

Q. About; you were an officer of election, you ought to remember something near.

A. I know I ought. I think it was something about thirty, if I am not mistaken.

Q. About the usual Republican majority?

A. I think so.

Q. The vote was paired off as it usually is in elections, or about the same?

A. About the same, I think.

Q. What would have average variation, you say it varies, sometimes; what would have been the average between the two parties at that time?

A. What I gave, I think; it may be a little more than the average, I never paid much attention to that part of it.

Q. Was the vote polled out fully in your precinct?

A. There was six votes that kind of got mixed on.

Q. Didn't vote?

A. Their vote was cast, I don't know whether it was—I don't think it was counted by the County Commissioners.

Q. That was six votes that were cast and not counted by the County Commissioners?

A. I think so. That was my understanding. I don't know that that was it; that is the way I understood about it; I don't know that fact.

Q. You were appointed by the County Commissioners as one of the election officers there?

A. Yes, sir.

Q. Are you a Republican or a Democrat in politics?

A. A Democrat.

Redirect examination by Mr. McQuown.

Q. Who was the sheriff of that election at that precinct?

A. Lee Patrick, I think.

Q. What was his politics?

A. Republican, I think.

D. Milt Haager, a witness, being duly sworn and examined by Mr. McQuown, testified as follows:

Q. Where do you live?

A. My residence is in Salyrsville, Magoffin County, Kentucky.

Q. Were you there at the election in November last?

A. Yes, sir, I was.

Q. Was you an officer in that election?

A. I was judge of the election in the Salyrsville precinct.

Q. What kind of ballots were used in that election?

A. The ballots were similar in quality to the ones that were exhibited.

Q. You mean exhibited by Mr. Minix, the County Clerk?

A. Yes, sir.

Q. Have you some of those ballots yourself?

A. Yes, sir.

Q. You examined that frequently?

A. Frequently, yes, sir, I have.

Q. Mr. Hager, state whether or not as an election officer you could see how the votes were cast when those ballots were handed to the officer by the voter?

A. I could readily and easily see how each of the voters voted, the ballots were handed to me and I examined the same and most of the ballots were handed to me, and the name of the voter torn therefrom. The ballots in the Salyrsville precinct were similar to those exhibited, I think of the same quality; the perforation where the name was to be torn off of the voter was not what it should be, and in tearing that—give me one of the ballots, this ballot. In tearing the name of the voter, before the ballot was deposited in the ballot box, the name here could be easily seen, you could see it by standing off this distance.

Q. State what distance?

A. You can see it here, you could see it by standing off ten feet, fully ten feet off or farther.

Q. Was there any conversation at the time between the officers as to your being able to distinguish how the votes were cast?

A. There was.

Q. Did the other officers observe from the back of those ballots the stencil marks upon them?

A. They did, when they so desired. Mr. Newt. P. Adams, who was the examiner—was the challenger—examined them quite often, frequently, for the purpose of ascertaining how the voter gave his vote.

Q. Was there any discussion as to how certain individuals voted between you or any of the election officers?

A. There was.

Q. Did you and the election officers ascertain the fact as to how the votes were cast in question?

A. We did.

Q. We did.

Q. How did you ascertain that fact?

A. By looking at the back of the ballot.

Q. As they were handed to you?

A. Willie May was Sheriff of the election, he is deputy Sheriff of Magoffin County, a Republican by politics, he went, and I saw him go to his father, I didn't hear what he said, to him; I don't suppose what he told his father would be competent.

Q. What was the result of the election in Magoffin County as between the candidates for Governor and Lieutenant-Governor?

A. If I remember correctly, I think it was 326.

Q. For whom?

A. For Taylor.

Q. How for the Lieutenant-Governor?

A. Three hundred and twenty-six for Taylor, for Markham, who was running for Representative there was 315, as I now remember, and there was for Beckham, it wasn't quite as much, as Mr. Taylor's, as I now remember.

Q. You mean Marshall or Beckham?

A. Marshall, I should say, Lieutenant-Governor.

Q. His majority was not quite so large as Mr. Taylor's?

A. Not quite so large as Mr. Taylor's.

Cross-examination by Mr. Sweney.

Q. When you gave the ballot to the voter, did you tear off the stub, his name from the ballot, detach that before you gave it to him, or after he had stamped his ballot?

A. The clerk did that; the clerk gave that to him, and when he gave me the ballot the name was torn off of the voter. Give me one of the ballots, I will illustrate it to you. The perforation of these ballots is very poor. That is the way the ballots were folded, the perforation of these ballots is very poor, and sometimes you will see how these ballots—the perforation of these ballots, some places it is perforated, and some places it is not and they had to be unfolded this way, they might possibly have been torn off some other way, and they were usually—

Q. What I asked you was—was this slip containing the name of the voter torn off before the ballot was delivered to the voter or not?

A. That slip was torn off, this ballot folded and placed in the ballot box.

Q. But you don't answer my question. The question is did you tear off the slip by the officers' direction; you say that the ballots were poorly perforated; was this slip torn off by the officers of election at your precinct before you gave the ballot to the voter to stamp the ballot, or after he had stamped his ballot and returned it?

A. The clerk issued the ballot to the voter, recorded his name and gave him the ballot. He went in the booth and voted, and

returned, and handed his ballot to one of the Judges; myself and William Hazelrigg were the Judges in the Salyrsville precinct, and then this name was torn off, detached, and the ballot deposited.

Q. Then it was torn off after the voter had stamped the ballot, as I understand it. I see you have quite a number of those ballots?

A. If you will give me the—

Q. I see you have quite a number of those ballots; how did you happen to have possession of those ballots?

A. They were given to me.

Q. By whom?

A. They were given to me by Mr., one Mr. Arnett.

Q. Who is Mr. Arnett?

A. Mr. Jack Arnett.

Q. Is he a county officer of any kind?

A. No, sir.

Q. How did he have possession of the ballots?

A. I don't know that. I can tell you what he told me.

Q. Was he an officer of election?

A. He was an officer of election.

Q. At your precinct?

A. Yes, sir.

Q. Instead of destroying the ballots, as the statute requires, you all took possession of the ballots?

A. We did not do so.

Q. How did you have them then?

A. Couldn't he have the ballots without taking them from the poll books there at the precinct?

Q. Is that a sample ballot?

A. That is not.

Q. Did you have any instructions issued to you as election officer about the disposition that was to be made of the ballots that were unvoted at the close of the polls?

A. The law was laid down.

Q. And you followed it?

A. We followed it.

Q. By keeping the ballots?

A. Not by keeping the ballots. I told [illegible] that we did not keep the ballots.

Q. How have you got them here?

A. I told you exactly how we got them here. I told you we destroyed the ballots in that precinct, as the law directed.

Q. Where did those ballots come from?

A. I told you that Mr. Jack Arnett gave me, and I can tell you what he said.

Q. I can understand very well where you got the ballots. I asked you the question where he got them?

A. I have answered the question fully, but I can repeat it.

Q. Well, sir, I have no objection to your repeating it.

A. Does the Board—

The Chairman. Tell him, if you know, how he got them?

A. I have said before that Jackson Arnett gave me the ballots.

Q. And that he was one of the officers of election?

A. I say, moreover, that they didn't come from the book that we used there in the Salyrsville precinct, because I know they were destroyed.

Q. That is what I wanted to find out exactly.

A. I have told you that and tried to say it for you.

Irving Meek, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name and place of residence?

A. Irving Meek, Catlettsburg, Ky.

Q. What is your business?

A. I am a printer by trade.

Q. Did you see the paper on which the ballots of Johnson, Magoffin, Pike or Martin counties were printed upon for the late election in November?

A. I saw the paper for Magoffin, Martin and Johnson.

Q. How did you happen to see that paper?

A. The paper was cut in the office I work in.

Q. Who cut it?

A. Harry Thomas of the Paupaw Printing Company.

Q. Where is his business house?

A. Catlettsburg.

Q. Did you afterwards do any printing in connection with these ballots or the ballot books?

A. I printed the certificates.

Q. For how many counties?

A. Three.

Q. Those three counties you have named? Johnson, Martin and Magoffin?

A. Yes, sir.

Q. Examine this ballot and see whether that is the same kind of paper that Mr. Thomas cut and on which the ballots were printed for those three counties you referred to?

A. I think that is about the same I examined; I think this is the same paper; something like it anyway; something near it.

Q. Do you know upon whose order these ballots were printed?

A. No, I do not.

Q. Did you say anything to Mr. Thomas while those ballots were being prepared or the paper cut in reference to the quality of the paper?

A. I told him that the paper seemed to me like it was pretty thin for ballot paper.

Q. Had you printed any other ballots before—seen them?

A. Yes, sir.

Cross examined by Gov. W. O. Bradley.

Q. Did you say something about some other ballots being printed for some other county in that office?

A. I don't know anything about any other.

Q. I will ask you if the paper was not ordered to print these ballots on from the Paupaw Printing Office?

A. I don't know.

Q. Do you know whether there was any failure to get the paper originally ordered from Cincinnati, or not?

A. I don't know.

Q. Who is the proprietor of that office?

A. W. A. Patton.

Q. (By a member.) You say the paper was cut in the office for these three counties?

A. Yes. sir.

Q. Was it all the same paper?

A. About the same paper of course, I could not tell whether it was exactly the same as this, or not.

Q. I don't mean whether it is the same paper as that you have in your hand but whether the paper cut in your office for one county was the same as for all three counties?

A. I don't know. I just picked up a sheet and felt of it.

Re-direct examination by Mr. McQuown.

Q. While he was cutting the paper that conversation occurred; or at least you made that remark to him?

A. Yes, sir.

Q. Do you recollect what he said in reply to that?

A. He said something but I don't remember what it was.

Q. Did you print or have anything to do with printing the names of the connties and the devices on that ballot?

A. No, sir.

Re-cross examined by Gov. Bradley.

Q. Are you a printer in that office?

A. No, sir.

Q. What do you do in that office?

A. I am not connected with the Paupaw office; I am in another office.

Q. Just simply happened to be present?

A. I was in there at work in that office.

Q. You were talking with Mr. Thomas?

A. No, that was in another office; in the office where I worked.

Q. Did you have that paper in your office?

A. Yes, sir; the paper was cut in our office.

Q. They brought the paper to your office to cut it?

A. Yes, sir.

J. M. Preston, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name and place of residence?

A. James Monroe Preston, Johnson county; Paintsville is the county seat.

Q. Do you hold any official position in that county now?

A. Yes, sir; I am County Court Clerk there.

Q. How long have you been County Court Clerk?

A. Two years the 1st day of this month.

Q. Did you have the ballots that were used in the election in November, 1899, printed for that county?

A. Yes, sir.

Q. Where did you have them printed?

A. At Catlettsburg, Boyd county.

Q. By what person or by what office?

A. Will Patton.

Q. You know the name of his office?

A. No, sir; only just Will Patton, Catlettsburg.

Q Does he not run an office called the Paupaw Office?

A. Yes, sir; the Paupaw Printing Office.

Q. You had the ballots, then, for your county printed by Mr. Patton at the Paupaw Printing Office, in Catlettsburg, Ky.?

A. Yes, sir.

Q. Did you obtain from him all the ballots that were used in the November election, 1899, in your county?

A. I did.

Q. Have you any of those ballots now in your possession either unused, spoiled or questioned?

A. Yes, sir; I have some.

Q. Will you produce them?

A. Yes, sir.

(Witness produces a number of stub-books with the ballots all torn out and one stub-book with a number of ballots still in it.)

Q. I will ask you to tear from this book at least four of these ballots, and file them, one with each board and make them a part of your deposition?

(Witness tears four ballots from the books and hands them to the Clerk of the two Contest Boards.)

Q. I will ask you, Mr. Preston, if you used the same kind of ballots; if the same kind of ballots were sent out to the various election officers throughout Johnson county as these which you have exhibited and filed here before the Board?

A. I could not answer that question just directly. When I came down to the printing office to get these ballots they said that in printing them they did not have enough—

Q. Wait a minute, I am not asking you what the printer said or for any conversation you had with him. I ask you, as far as you know, Mr. Preston, were the ballots sent out by you or de-

livered by you to the various election officers the same as those which you have produced here?

A. I can't answer that question unless you let me say a little word before that. I can't answer unless you give me a chance to explain.

Q. Have you any other books that contain ballots?

A. No, sir; the ballots were torn out of all the other books.

Q. Have you any questioned or spoiled ballots?

A. No, sir.

Q. Have you any other ballots of any kind except from the book you tore these from?

A. No, sir; except the stubs.

Q. Produce the stub-books and let us see them?

A. All right, sir.

(Witness hands Mr. McQuown a number of stub-books.)

Q. How many precincts in your county?

A. Ten.

Q. These are the stub-books of the various precincts?

A. Yes, sir.

Q. Examine the various stub-books and say whether there is any difference in the paper as compared with these ballots?

(Witness examines the stubs in the various stub-books.)

Q. Have you examined the stub-books for the various precincts?

A. Yes, sir.

Q. State to the Board whether the paper is the same as in the ballots which you have filed?

A. I can't tell any difference.

Cross-examined by Mr. Sweeny.

Q. You started to tell, in answer to a question asked by attorney, something in regard to the character of paper upon which the ballots were printed; will you please go ahead and state what was done in that regard?

A. Well, Mr. Patton said that he had run out of the paper which he was using—

Objected to by Mr. McQuown; and the objection then withdrawn.

A. Mr. Patton said that he ran out of the paper and had to send to Cincinnati in a hurry that he was right in the midst of printing the election ballots and they sent him another paper, and it was some different, he said, but a finer class of paper and cost three cents more on the pound than the former paper.

Q. That his supply of paper ran out and he had to send to Cincinnati to get more?

A. Yes, sir; and it cost three cents a pound more.

Q. How did it happen that these ballots were returned to the County Clerk, do you know—the ones you have filed here?

A. From the fault of the precinct officers; the officers instead of destroying them returned them.

Redirect Examination by Mr Ollie James.

Q. In that conversation in which he told you that he had gotten out of paper did he tell you that he had gotten out of a rooster device and that was what caused them to use the small rooster?

A. No, sir.

Q. Did he say anything as to why it was that the rooster was made smaller than the device under the Brown ticket? And the Republican device?

A. No, sir.

Q. Did you tell him to do that?

A. No, sir.

Q. What is your politics?

A. Republican.

Q. How did that county go?

A. Republican.

Q. What was the majority?

A. 875.

George Vaughan, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name, and where do you reside?

A. My name is George B. Vaughan, and I reside about a mile above Paintsville, Ky., Johnson County.

Q. What is your occupation?

A. I have been hauling—driving teams for the last four or five years; four years.

Q. Did you have any official connection with the election which was held in November, 1899, in Johnson County?

A. Yes, sir.

Q. What connection?

A. I was one of the Judges.

Q. In what precinct or voting place?

A. Precinct 1, known as the Paintsville Precinct in Johnson County.

Q. What sort of ballots were used in your precinct?

A. They were pretty thin.

Q. How do you know they were thin?

A. I knew it by looking at them.

Q. Looking at the back or the face of the ballots?

A. Looking at the back of it.

Q. In looking at the back of the ballots what could you discover, if anything?

A. I could discover how a man voted.

Q. As a matter of fact did you discover during the election how persons voted whose ballots were deposited with you?

A. Yes, sir; I could have seen how every man voted if I was so minded.

Q. Was the ballots upon paper so thin that you could readily distinguish the stencil marks and the devices?

A. Yes, sir; very easily.

Q. Was there any talk or comment about it amongst the election officers at your precinct at the election?

A. Mr. W. H. Vaughan, the Republican Challenger, when we commenced voting, remarked to me that that ballot was too thin, and he said that the Fiscal Court of the County ought not to pay for the ballots. He was the Republican Challenger.

Q. I show you a ballot filed with the testimony of J. M. Preston, County Clerk of Johnson County, this day with the Board, and ask you to examine this ballot, and say whether or not that is the kind of ballot that was used at your precinct at the last election?

A. Yes, sir, I think that is the same kind of ballot.

Q. Have you one of your own?

A. I have one here.

Q. Where did you get that one?

A. I got that from J. C. C. Mayo.

Q. This one has a mark on it under one of the devices?

A. Yes, sir.

Q. It is the same ballot?

A. Yes, sir; it is the same ballot.

Cross-examined by Mr. Sweeny.

Q. Your precinct is it Democratic, or Republican?

A. Republican.

Q. About what is the majority—the usual majority in that precinct?

A. Well, sir, I could not be positive, but I will give my best impression; it is from 90 to 100.

Q. How did it result this time?

A. I think the majority, if my memory serves me right, was 96 majority for Mr. Taylor.

Q. And the usual majority is from 90 to 100?

A. Yes, sir; about that way.

Q. It was along about an average?

A. Yes, sir.

Q. I did not understand where you say you got this ballot you had?

A. Mr. John C. C. Mayo of Paintsville gave it to me.

Q. Where he got it you don't know?

A. No, sir. But my impression is that he got it when I burned the ballots up on the night of the election; that he took it out. I don't know how he got it.

D. J. Chandler, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name, and where do you reside?

A. My name is D. J. Chandler; I reside in Johnson county.

Q. Were you an officer of election in that county or connected with it in any way in November, 1899?

A. I was challenger and inspector only.

Q In what precinct?

A. In Little Gap precinct; I think it is No. 8.

Q. What sort of ballots were used in that precinct, Mr. Chandler, with reference to seeing through them?

A. The ballots could be seen through; that is after they had been folded you could still distinguish the marks under the device. I never noticed it for a few minutes after I entered the booth, that that could be done. How come me to notice it I went around from the door—it was a cold day—to where the Judge deposited the ballots in the box between me and the window and I looked around while he was raising one of the ballots to deposit it in the box and I noticed that I could distinguish the mark under the device, and then I paid attention to some several when I took the pains to get around and look at them during the day.

Q. Every time you looked could you ascertain how a certain person voted; were you enabled to do so?

A. Yes, sir; every time I tried I could see how a person voted by going around there when the Judge went to deposit it in the ballot box.

Q. Do you know whether the judges or the other officers of election who were in the voting place, saw and knew from the back of those ballots how the votes were being cast?

A. I know they said they did.

Q. Was it discussed during the day by the election officers?

A. No, sir; I don't know that we particularly discussed that point during the day. There were other irregularities, as I thought, that were discussed during the day, but we never discussed that point.

Q. What were the other irregularities?

A. There were persons that returned into the voting-place after they had deposited their ballot. This I thought—

By the Chairman. That is not competent.

Cross-examined by Mr. Sweeny.

Q. I understand you to tell the Board, from your statement that you could only see these marks on the ballots—how they were voted when you got the ballot between you and the window?

A. No, sir; I don't mean that. I went in there to see several of them as the Judge deposited them and he was right close to the window and I could see when he deposited the ballots.

Q. And had the ballot between you and the light?

A. Yes, sir; the ballot was between me and the light; but I could have seen it, anyway.

Q. That was what attracted your attention to it?

A. Yes, sir.

Q. You were the Democratic challenger there?

A. Yes, sir.

Q. What was the vote in your precinct—I mean by that was it Republican or Democratic?

A. Republican.

Q. About how much is the average majority?

A. It has gone all the way from 232, I believe that it gave Mr. Langley in 1896, down to about 170, I think; possibly lower than that in the last vote.

Q. What was the plurality this time for Gen. Taylor?

A. I don't remember exactly; possibly 187.

Q. About an average, was it not?

A. I think so.

Q. They are nearly all Republicans in that precinct, aren't they?

A. Yes, sir; only fifteen Democratic votes.

Q. A Democrat feels pretty lonesome in that precinct?

A. Not necessarily.

Re-direct examination by Mr. McQuown.

Q. I want to exhibit to you this ballot and ask you to examine it and see whether that was the character of ballot that was used in your precinct? Ballot marked with Mr. Preston's name on the back?

A. I think that is the same ballot. I see the difference in the devices and the thinness of the ballot.

Q. On the ballots that you voted was there a difference between the devices—the size of them?

A. Yes, sir; there was.

Q. What is the difference; which are the largest devices?

A. The Brown Democratic ticket and the Republican are under a good deal the largest devices.

Q. That was the Log Cabin and the picture of Gov. Brown and Mr. Johnson, which were the largest?

A. Yes, sir.

W. T. Phillips, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name and where do you reside?

A. My full name is William Thompson Phillips; I reside at Pikeville, the county seat of Pike county.

Q. Do you hold any official position there?

A. Yes, sir; I am the County Clerk.

Q. How long have you been County Clerk?

A. Two years the 3rd day of last January, I reckon.

Q. Have you in your custody, Mr. Phillips, as Clerk of Pike county, any of the ballots which were used in the late election in November, 1899?

A. Yes, sir; I have some in my pocket here.

Q. You say you have some ballots which were used in the county of Pike?

A. Yes, sir; I have some ballots here in my pocket.

Q. Will you produce them?

(Witness produces ballots and hands them to the attorney.)

Q. Were any of these voted or unused ballots?

A. Unused ballots returned as spoiled or mutilated ballots. I think all perhaps from the same voting precinct.

Q. Did you have these ballots printed?

A. Yes, sir.

Q. Where did you have them printed?

A. Bradley & Gilbert printed them.

Q. Are these the same kind of ballots that you used in all of the voting precincts in your county?

A. Yes, sir; all just alike as near as I can see. I had occasion to look at nine hundred of them. There was a mistake in the name of one of the men who was running for Constable, and I run through the ballots.

Q. I will get you to file one of these ballots with each Board as part of your testimony in this case.

(The witness here handed the ballots to the clerks of the two Boards.)

Cross-examined by Mr. Sweeny.

Q. You had them printed by Bradley & Gilbert?

A. Yes, sir.

Q. You just wrote a formal request for the ballots?

A. I just wrote them to send me ballots and gave them the precincts and the number of ballots for each precinct.

Q. How long have you been Clerk in that county?

A. Two years the first Monday in last January.

Q. Were any of these ballots returned to your office in a sealed envelope and objected to because of the thinness of the ballot or for any other error in the ballot?

A. No, sir; I think not.

Q. These ballots are on the same class of paper that you had been in the habit of using in your county?

A. Yes, sir; about the same. I really think that it was a little better than any ballots we have ever had. I have one of the ballots for 1898 and I have one for the first year of the secret ballot, and I think this is a heavier ballot.

Q. Have you those other ballots with you?

A. Yes, sir.

Q. Show them to us?

(Witness produces ballots.)

A. Here is one for the first year of the secret ballot.

Q. This was a ballot that was, as I understand, used in the first election after the secret ballot came into effect?

A. Yes, sir.

Q. You say you have another ballot?

A. Here is one that we voted on last year; the first one I ordered after I came into office.

Q. The emblem on this ballot is a little larger than the rooster, is it not?

A. I never paid any attention to that.

Re-direct examination by Mr. McQuown.

Q. How did your county go in the gubernatorial race; who carried it?

A. Mr. Taylor.

Q. How much majority?

A. I believe the Commissioners counted 424 majority.

Jerome Damron, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name, and where do you reside?

A. Jerome Damron is my name; I reside in Pike county.

Q. Did you have anything to do with holding the late election in November, 1899, in Pike county?

A. I did not—didn't have anything to do with it.

Q. Were you present at the election?

A. Yes, sir.

Q. Did you vote?

A. I voted at District No. 14.

Q. What sort of a ballot did you use?

A. I used what I call a thin ballot.

Q. Well, what makes you call it a thin ballot?

A. Because, after I had voted—had entered the booth and voted, I held the ballot up and could see how I voted from the outside of the ballot.

Q. You say, after you voted you could see from the back of it how you had voted? See the stencil mark?

A. Yes, sir.

Q. Did you observe that after you left the booth, or before you left the booth?

A. Before I left the booth.

Q. What sort of a place was the booth situated in—that is, in a house?

A. In an open place.

Q. What are your politics, Mr. Damoron.

A. I am a Democrat.

Q. Which wing of the Democracy?

A. I voted for the Brown ticket, as it is called.

Q. What political party does the County Clerk of Pike county belong to?

A. Republican party.

Q. By Mr. James. What is his name?

A. Phillips.

Q. The man that just testified here a minute ago?

A. Yes, sir.

Cross-examined by Mr. Sweeny.

Q. Had you folded your ballot, how many times, when you examined it so as to see whether you could see through it?

A. Well, that way the one was folded—I only had to look through the paper.

Q. Through just the one sheet of the paper?

A. Yes, sir; the one sheet of the paper, to see how I voted.

Q. Did you hold it up between you and the light?

A. Yes, sir; it was light in the booth; there was no top on the booth.

Q. You had the ballot up between you and the light?

A. I just held it up that way (indicating.)

Q. Between you and the light?

By a member. Did you say it was in the open air?

A. No, we had booths.

By the member. I thought you said the booths were in the woods, not in a house?

A. No, it was on a rock bar, you might say.

Q. By the member. Not in a house at all?

A. No, sir.

Re-direct examination by Mr. McQuown.

Q. Do you mean to say that you held the ballot up above your head?

A. No, sir; I held it out there before me.

Q. Oh, that you just held it out in your hand, before you?

A. Before me.

George Pinston, Jr., being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name?

A. George Pinston, Jr.

Q. And place of residence?

A. Pineville, Pike county—I live in Pike county, Pineville.

Q. Were you an officer at the election last November in Pike county?

A. No, sir; I was not.

Q. Did you vote at the election?

A. I did.

Q. Well, tell the Board what sort of ballots were used, and what sort of one was furnished you to vote with?

A. Well, the ballot that I voted on was a very thin ballot. It was one that was furnished me by the Clerk of the precinct.

Q. How did you know it was thin, Mr. Pinston?

A. I could tell from the feeling of it that it was a thin ballot, and then after I had voted I held my ballot out before me that way, and I could see how I voted from the outside.

Q. You held it out before you, not between you and the light, but simply before you, as I understand?

A. Yes, sir; just held it out that way, and I could see how I voted from the back.

Q. Tell from the back of the ballot how you voted, by holding it out in front of you?

A. Yes, sir.

Q. Did you see any other ballots that had been voted at that election, Mr. Pinston, and did you examine them to see whether you could distinguish how the voter had voted, from the back of them?

A. No, sir; I didn't see any other ballots except my own.

Q. You were not an election officer?

A. No, sir.

Cross-examined by Mr. Sweeny.

Q. How many times had you folded the ballot before you noticed to see whether you could see through, or not?

A. The ballot was only folded one time, I think.

Q. And you just had to look through the single sheet?

A. Yes, sir.

James H. Young, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name, and where do you live?

A. My name is James H. Young; I am an attorney-at-law, and live at Pikeville, Ky.

Q. Were you an officer at the election held last November in Pike County?

A. No, sir; I was not; that is, I don't suppose—I was a challenger.

Q. You were a challenger?

A. Yes, sir.

Q. At what voting place?

A. The precinct known as South Pikeville No. 1.

Q. Did you observe the kind and character of the ballots that were used in that election at that precinct, Mr. Young?

A. I think I did, sir.

Q. From what you saw of them, were you enabled, or not, to distinguish how the voters had voted, from looking at the ballot from the back of it?

A. I had no difficulty in knowing exactly how all of them voted that I took the pains to examine; I did not notice all of them—a great many of them I knew how they would vote anyhow; all that I was a mind to, I could distinguish through the folded ballot how they were voting.

Q. Do you know whether any of the other officers of the election also distinguished how the votes were cast by looking at the backs of the ballots?

A. The Clerk of the election did.

Q. How do you know that, Mr. Young?

A. Well, I only know by what he said.

Q. At the time there, while the election was in progress?

A. Well, it was during the day sometime; I don't think there was any balloting going on right at the time; sometimes there would be a cessation of several minutes between the times that the crowd would come in.

Q. Well, what occurred?

A. He said that he saw the stencil marks on the first four ballots that were cast, and that he then ordered the Sheriff of the election to close the top blinds of the windows. The windows were something like these, with inside blinds, and he had the inside blinds closed at the top, so that it would not let so much light in on the table.

Q. Well now, after the blinds were closed, did you observe from the back of the ballots how the votes were cast?

A. Oh yes, sir; it didn't make any difference to me; I saw on my ballot—I was Challenger, and saw on my vote. I don't know whether Mr. Kline saw, or not; he said afterwards he didn't notice any more after that—after the blinds were closed.

Q. What condition were the ballots in when you observed the stencil marks from the back?

A. They were folded.

Q. Well, were they lying on a table or in anybody's hands?

A. Yes, sir; they were laying on the table; they laid them down on the table.

Q. Could you distinguish the way the votes were cast by looking at the back of the ballots as they were laid upon the table?

A. Yes, sir; I didn't make any effort to look at any other part, except the back; I had no occasion to look any further than the back.

Cross-examined by Mr. Sweeny.

Q. You were the Democratic challenger, were you?

A. Yes, sir.

Q. That precinct—is it a Republican or Democratic precinct?

A. It is a Democratic precinct.

Q. Democratic?

A. Yes, sir.

Q. Go Democratic this time?

A. Yes, sir.

Q. By the usual majority?

A. No, sir.

Q. About how much difference?

A. I think, if my recollection is right, I don't undertake to say exactly, but I think it went sixteen this time and the usual majority is about forty-five.

Q. Any Brown votes in that precinct?

A. There were thirteen.

Re-direct examination by Mr. McQuown.

Q. Well, did you run out of ballots there?

A. Yes, sir.

By Gov. Bradley. Well, sir, we object to that.

Q. If you know any cause for that, other than the eloquence of the gentlemen on the stump, why, please to state it?

A. Well, sir, we had 275 ballots bound in the book, and the tax-book shows that we have from 350 to 360 voters.

Q. Was that about the usual number of voters in that precinct—about 350?

A. We don't generally vote quite that many, though the tax-book shows a little more than that in the precinct. We generally vote from 300 up to 325.

Q. You were furnished a bound book of ballots of 275?

A. Two hundred and seventy-five—yes, sir.

Q. Your majority was sixteen, and the usual majority is about how much?

A. Anywhere from thirty to fifty—generally about forty-five, I think.

Q. (By Mr. James.) Who furnished those ballots?

A. The Clerk of the County Court furnished them to the clerk of the election, I think, sir; and then there was some more after that in pieces—loose.

Re-cross examined by Mr. Sweeny.

Q. Then I understand you that none of your voters that were there, were deprived of the privilege of voting by reason of the ballots giving out?

A. No, sir; we voted a whole lot of loose ones that they borrowed from some place.

Q. You carried your precinct all right anyhow?

Q. (By Mr. James.) This County Clerk was a Republican that furnished these ballots there, wasn't he?

A. Yes, sir; decidedly.

Steve Osborne, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. State your name and place of residence?

A. My name is Steve Osborne, and I live in Pike County.

Q. Were you an officer of the election held in November last in Pike County?

A. Yes, sir.

Q. What official position did you hold?

A. I was judge of the election.

Q. What precinct?

A. No. 2.

Q. What sort of ballots, Mr. Osburne, were used in that election in your precinct?

A. They were very thin ballots, I thought. They were thin enough until I could see through the ballots.

Q. From the back of them?

A. Yes, sir; that is, I could see the cross that was made on the ballots?

Q. You could see the cross made on the ballots from the back of them—you mean the cross that was made by the stencil mark under the devices?

A. Yes, sir.

Q. You could then determine how a man voted when he used one of these ballots, from the back of the ballot?

A. Yes, sir; I could.

Q. Do you know whether the other officers of election saw the same thing that you did in reference to ascertaining how the votes were being cast?

A. I suppose the other Judge did, Mr. Hopkins, from a conversation I and he had about it.

Q. Well, what did you and him say about it?

Objected to; overruled and exception.

A. I saw Mr. Hopkins shake his head—he looked in the direction and shook his head; that was after I had given Mr. Hopkins the chair, and I had had the chair receiving the ballots myself.

By the Chairman. This was in that voting place?

A. Yes, sir; and after I had given him the chair he taken the ballots, and I was standing back there taking the names of the voters; he tore them off and reached them to me, and I was where the gentleman had voted that had just given him the ballot, and Mr. Hopkins raised his head and looked over the ropes toward a gentleman and shook his head that way (indicating), and it kinder tickled me, and I said to the gentleman, I says "He didn't get it in right that time," and Mr. Hopkins said to me, he says "Hold down here," and I held over to him, and he said "If they don't know how many votes, they have got to get it different from what they have got it."

Q. Well, Mr. Hopkins was the other Judge?

A. Yes, sir.

Q. The Republican Judge?

A. Yes, sir.

Q. Who was he shaking his head at?

A. He looked in the direction of Mr. Sauers—Mr. Jim Sauers, the County Attorney of Pike County.

Q. Was he a Republican or a Democrat?

A. He was a Republican worker at the precinct. He looked in that direction towards him.

Cross examined by Mr. Sweeny.

Q. You are a Democrat yourself?

A. Yes, sir.

Q. Is your precinct a Republican, or Democratic precinct?

A. It is Republican.
Q. About how large is the usual majority, please?
A. Well sir, it generally goes from forty to fifty.
Q. Republican?
A. Yes, sir,
Q. How did it go this time?
A. It went about 86; from eighty to eighty-six, I think.
Q. Plurality or majority?
A. Majority.
Q. Did Gov. Brown receive any votes there?
A. Yes, sir; four or five—I don't know which; one or the other, I think.
Q. About the usual number of votes cast?
A. Yes, sir; I think there was one or two votes more cast than the precinct was ever known to cast.
Q. How was that; I didn't catch that?
A. Some one or two more cast than the precinct was ever known to cast.
Q. Did the Populists get any?
A. Yes, sir; two or three.
Q. Prohibitionists?
A. It seems that they did; I could not state these things positively.
Q. Well, within your best recollection?
A. Yes, sir; I think one or two.
Q. The Socialists get any?
A. Not that I remember of.

S. B. Dishman, being duly sworn and examined by Mr. McQuown, deposed as follows:
Q. What is your name, occupation and place of residence?
A. My name is S. B. Dishman; occupation that of an attorney-at-law, and reside at Barbourville, Ky.—Knox county.
Q. Were you an officer, or have any connection with the election held in Knox county last November, Mr. Dishman?
A. Yes, sir; I was one of the judges of a precinct in Barbourville.
Q. What sort of ballots were used in your precinct, Mr. Dishman.
A. Well sir, we used the official ballot furnished there by the County Clerk, I suppose.
Q. State to the members of the Board whether that ballot was transparent so that you could see from the back of it under each device, the mark that was made, or not?
A. Yes, sir.
Q. Describe what you saw and know on that subject?
A. The first vote that was cast, our attention was called to the cross being observed through the ballots so that we could dis-

tinguish for whom the voter had voted, and we noticed through the day many votes that were cast—we could tell who the party voted for. The ballots were folded by the clerk and handed to the voter, and when he would return from the booth he would usually return the ballot folded in the same manner that it had been delivered to him; most of the ballots that were returned by the voters there at that precinct, I took charge of them and tore off the secondary stub. I placed the ballot upon a book that was lying on the table, and detached the stub from the ballot without any effort on my part to see who the voter voted for—I could easily distinguish who he had voted for, and I think that I knew and could have told the next day, or that day, or at any time within a few days thereafter, I could have told by taking the stub-book how each voter had voted in the precinct, not only for the Democratic party, but the Prohibition, Populist, Socialist, or Republican party. There may have been a few votes that escaped my notice by not handling them, but I tried to make no effort at all to see how the vote was cast.

Cross-examined by Mr. Sweeny.

Q. You were a Democratic official, Mr. Dishman?

A. Yes, sir; I was appointed—one of the Democratic Judges.

Q. Where were those ballots printed, do you know?

A. My understanding is they were printed there at Barbourville by a paper published there, known as the Path Finder.

Q. Your precinct was Democratic or Republican?

A. Republican.

Q. About what was the usual Republican majority—in the neighborhood of?

A. In that precinct?

Q. Yes, sir.

A. The majority this time was something near 300, I think.

Q. In the precinct?

A. Yes, sir; 280 probably.

Q. You are the only Democrat in there, ain't you?

A. There are about forty or fifty of us there.

Q. Well, did they get that many votes, the Democrats, forty or fifty?

A. I think we got about forty or fifty.

Q. About the usual Democratic vote in the precinct?

A. I don't remember, Mr. Sweeny. I think, though, the vote was pretty well voted out in that precinct.

Q. About the usual majority?

A. Yes, sir.

Q. The Democrats don't feel from lonesomeness there, then?

A. Well, there is some feeling of lonesomeness there after the polls are closed—usually.

Q. Well, did the Brown ticket get any votes there?

A. The Brown ticket got a few votes in the precinct.

Q. You don't remember how many?

A. Something like that—3, or 4, or 5.

Q. Mr. Dishman, I am requested to ask you if it is not true that a great many men, who have heretofore, in your county, affiliated with the Democratic party, that were not for what is known as the Goebel Democratic ticket this time?

A. Yes, sir; we had some few Democrats there—Democrats that had been Democrats heretofore, that refused to support the ticket this time.

Q. Refused to support the ticket?

A. Yes, sir.

Q. Voted, some of them, for Taylor, and some for the Brown ticket, did they not?

A. I suppose so, sir. In that precinct I know of two that voted for Brown; one of them voted for Brown alone, and the balance of the Republican ticket.

Q. And some of them voted for Taylor?

A. One of them voted the Republican ticket straight; and then there was some two or three of the men that had been Democrats that voted the Republican ticket straight—had gone over for a year or two.

Re-direct examination by Mr. McQuown.

Q. What is the name of your County Clerk?

A. John Parker.

Q. What is his politics?

A. He is a Republican.

Q. He furnished these ballots?

A. I suppose so, sir.

Q. Is he here to-day?

A. I think he is—yes, sir.

H. H. Steele, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name?

A. H. H. Steele is the way I sign it.

Q. Where do you live?

A. Barbourville, Knox County.

Q. Were you an officer of election last November?

A. No, sir.

Q. Did yon vote at the election?

A. Yes, sir.

Q. What sort of a ballot did you use in voting?

A. I didn't pay particular attention to the ballot; they were a little thin I thought, was all. I never noticed particularly about the ballots.

Q. Well, could you, or not, distinguish through the ballot how the vote had been marked upon it?

A. I didn't notice. No, sir; I didn't notice.

Q. Did you see any ballots that were used that you could distinguish from the back of the ballot?

A. If I did, I don't remember.

John Parker, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name, residence and occupation?

A. John Parker, of Barbourville, Knox County; I am the County Clerk.

Q. Did you have the ballots—the official ballots—prepared for your County at the last election?

A. I did.

Q. Distribute them as required by law, amongst the various officers?

A. I delivered them to the Sheriff of the County—to the Deputy Sheriff of the County.

Q. For delivery to the election officers?

A. Yes, sir.

Q. Have you any ballots that were voted, or spoiled, or returned questioned, in your possession?

A. Yes, sir.

Q. Will you produce them?

A. I will; they are down at my room at this present time.

Q. How far is your room, Mr. Parker?

A. It is around here by the Capital Building, I can go and get them, if you can excuse me that long.

Q. You have with you a ballot marked on the back "official ballot, John M. Parker, County Clerk, and E. E. Prichard, Clerk of Election."

A. The County Clerk's name again? No "M" in it.

Q. I say John Parker?

A. Yes, sir.

Q. Is this one of the ballots that was used in the election in Knox county, in November, 1899.

A. It is, yes, sir.

Q. Did you have them printed?

A. Yes, sir.

Q. Where did you have them printed?

A. Hudson Printing Company, Barbourville.

Q. Were all the ballots that you had printed and delivered to the Sheriff for use in that election like this?

A. Yes, sir.

Q. I want to use this, if the Board please, as evidence in the case, and it is a ballot that seems to have been marked "questioned" and not counted, and a ballot that was attempted to be voted, and I submit to the Board that we desire to have this ballot filed and another one filed, one with each Board.

The Chairman. Very well.

Q. Now, have you another one, Mr. Parker, of the same kind?

A. Yes, sir, I have plenty of them of the same kind.

Q. Well, let's have another one.

Mr. McQuown. I would like to have each of these marked by the Clerk as filed in each contest.

Cross-examination by Mr. Sweeney.

Q. Have you filed a sample of the ballot that was used?

A. I have not filed it. I suppose it could be filed when the Court says file it. But these are the records of my office.

Judge Yost. Haven't they asked you to file it?

A. No, sir; they asked me if I would file it, and told them I would not.

Mr. Sweeney. Have you any ballot with you that is not a record of the office that you can file?

A. No, sir, I have not.

Q. These are sample ballots of the ballots that were used upon the day of the election?

A. No, sir, these are not sample ballots; these are the official ballots.

Q. Were all of them printed upon the same character of paper?

A. Yes, sir.

Q. This is the usual kind of paper that you have the ballots printed on as a rule?

A. This is the first I have had printed.

Q. You made no exception from the ordinary rule in this case, did you?

Objected to.

Q. You made no exception in these, did you?

A. No, sir.

Q. In selecting the paper for these ballots. I will ask you to examine that ballot; that is one of your ballots, possibly you can identify it by looking at the back of it?

A. Yes, sir.

Q. Can you explain to the Committee why this ballot was questioned?

A. All the evidence I have is what is endorsed on the back of it.

Q. Read the endorsement?

A. "Questioned but counted for the republican ticket and John H. Wilson. J. Smith Hays, clerk."

Direct-examination (continued by consent, on some questions overlooked.)

Q. I want to ask you please to examine that ballot and see if that is one of your county ballots of the kind that you had printed, and that?

A. Yes, sir, that resembles that.

Contestee objects to witness filing ballots now referred to.

Mr. McQuown. I have no objection to his filing the official ballot, if you want it. The witness said he objected to it. Are these the same ballots?

A. That resembles them.

Q. Don't you know your signature?

A. That is my signature.

Q. You didn't sign any except the ballots you had printed?

A. I didn't sign the ballots.

Q. Didn't you write that?

A. No, sir, I wrote my signature and he printed it.

Contestee objects to witness filing any that he did not bring in himself.

Contestant asked the Board to require the witness to file the official ballot.

Mr. Breckenridge. Was this the mode in which that was to be folded, do you know, before it was put into the ballot box? (Handing witness folded ballot.)

A. Well, the mode in which it was to be folded is the proper mode, I suppose. That would be the proper mode, the signatures of the County Clerk and the Clerk of the election should be out.

Mr. Breckenridge. I desire to hand you that to see whether the mark can be seen with it folded in that way?

Q. Do you think that you can not tear off the name of the voter without spreading that ballot out?

A. No, sir, it is not true.

Q. You can't keep it folded up that way and tear off the name, can you?

A. Yes, sir.

A Committeeman. This way?

A. Yes, sir.

Committeeman. Can you tear the name off the length, off the secondary stub?

A. Yes, sir.

Q. Tear it off on this side folded up this way?

A. I don't know how it was folded, but when it is folded in that way it can be torn off.

Mr. Hendrick. I asked the way it was folded when Colonel Breckenridge handed it to you?

A. When it is folded in that shape, but I don't know the way in which it was folded.

Q. How do you usually when you go to tear off the name, fold it up?

A. Here is a secondary stub already torn off. We fold the ballot up this way. We catch that ballot and fold it that way. You can bring that ballot down that way, but the trouble is to lay your ballot down here, and tear off your secondary stub, and here the signature of your clerk is out.

Mr. McQuown. Do you know how it was folded by the various election officers? You were not present and didn't see it?

A. No, sir, I don't know.

A Committeeman. When it is folded, as you have just folded it, how many thicknesses are there of paper through the ballot?

A. I haven't examined it to that fact.

Q. Just fold it.

A. Eight.

Q. Eight thicknesses?

A. Yes, sir.

Mr. McQuown. We desire that the ballots be retained until this matter is through, and then they may be restored to their custodian.

It was suggested that some ballots not deposited that way be filed and used.

Witness. I can't say that the ballots that this gentleman (Mr. McQuown) has are these (official) identical ballots. I can't let my records go out of my hands. I am responsible for them.

Mr. Breckenridge. Have you a ballot in any way where the secondary stub has not been torn off?

A. No, sir, I have not.

Mr. Breckenridge. There is no ballot book returned, or ballots not destroyed?

A. No, sir.

The Chairman stated that the ballots would remain in possession of the Board until they could be utilized in the case, and when through with them, to be returned to the Clerk.

Cross-examination (resumed) by Mr. Sweeney.

Q. Will you please explain to the Board if you know why this ballot was not counted?

Objected to as immaterial; objection sustained.

Q. This is a ballot, one of your county ballots?

A. Yes, sir.

Q. I will ask you to hold that ballot between you and the light and see if you can see the mark of the stencil on the back. Hold it between you and the light.

Objected to; objection overruled.

A. Yes, sir.

Q. Hold it down where the light does not reflect on it, and see if you can see it?

A. You can by close inspection.

Mr. Ollie James. You say you are County Clerk of that county?

A. Yes, sir; of Knox county

Q. What is your party affiliation?

A. I am a Republican.

By Mr. Sweeney. Were any ballots returned to you sealed in an envelope because they were too thin?

A. No, sir.

Q. Were any ballots returned to you sealed in an envelope and objected to for any particular reason?

A. On account of the ballot?

Q. Yes?

A. No, sir.

Q. If I am not mistaken, I asked you if you did not just procure this paper for the printing of the ballots, or in other words, procure these ballots as was the universal custom without any exception to the universal rule?

A. I did not procure the paper; I contracted with the Hudson Printing Company to print the ballot, and they printed the ballot.

Q. You simply wanted the ballots to come up to the requirements of the statutes?

A. Yes, sir, I cautioned them in particular in the presence of the Sheriff and County Attorney to fill them up as the statute requires.

Q. Where is the company located that printed these ballots?

A. At Barbourville, Ky.

Q. These ballots are as thick, are they not, as the ballots that have been used in your County heretofore?

A. No, sir. The ballots that have been used heretofore are thicker than these, some of them, but I don't know about all of them, but some of them are thicker than these.

Q. Do you know of any of them being thinner than these?

A. No, sir.

Q. But the Clerks have to rely on the printing company to get these ballots and make them a short time before the election?

A. Within fifteen days, yes, sir.

Q. You generally have to accept whatever is sent to you?

A. Yes, sir.

Q. Provided they are correct as to names, etc.?

A. Yes, sir. I arrange the ballot and furnish it to the printer, a model to make the ballot by, and he makes it.

Q. Your county is a Republican county?

A. Yes, sir.

Q. Do you know how many Democrats in your couny who did not at this time vote the Democratic ticket?

A. I don't know how any man voted except myself.

Q. As to general hearsay?

A. Oh, yes, I have heard of a few—

Objected to. Objection sustained.

Q. What is the Republican majority of that county?

A. 1485.

Q. Majority or plurality?

A. Majority. They receive that many votes more than the Democratic party receive.

Q. Than Mr. Goebel received?

A. Yes, sir.

Q. Did Mr. Brown receive some votes in your county?

A. Yes, sir.

Q. Then the vote received by Gen'l Taylor was a plurality and not a majority over all?

A. No, sir; it was a majority over Goebel.

Q. What is the usual average Republican majority in your county?

A. Well, it ranges from 1200 to 1400.

Q. About the same—excuse me.

A. Excuse me but I wish to take back one thing I said. I said 1485 I am not certain. It might be 1385. 1385, I wish to correct that.

Q. It is about the same as usual, very little difference?

A. Yes, sir; it is a little smaller than McKinley's majority I believe.

Q. Smaller than the majority received by Gov. Bradley, when he was a candidate four years ago?

A. I don't recollect Bradley's majority.

Q. You don't remember?

A. No, sir.

D. B. Faulkner, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. Please state your name, place of residence and occupation?

A. My name is D. B. Faulkner; my place of residence is Knox county, Ky.; my occupation is a farmer.

Q. Do you live in the town of Barbourville, or out in the county?

A. I live in the country on a farm.

Q. How far from Barbourville?

A. About seven miles.

Q. Were you an Election Commissioner last year in Knox county?

A. I was.

Q. Who were the other Commissioners?

A. Mr. Woodson and Mr. Jarvis; W. S. Woodson and J. W. Jarvis.

Q. Do you know anything about the character of the ballots that were used in the November election in Knox county?

A. Only what was sent up to the Board.

Q. Do you remember how many came to your Board, Mr. Faulkner?

A. No, sir; I don't remember. There was, I believe, there was twelve voting precincts in the county, I think every ballot box had a few ballots. Ward No. 1 had 42.

Q. Did you and the other Commissioners in the discharge of your duties, examine those ballots to pass upon them and to

determine for whom they should be counted, or whether they should be counted?

A. Well, no, sir, I don't think we ever passed upon them.

Q. You never determined as to whether they should be counted or how they should be counted?

A. No, sir.

Q. What about the character of those ballots; that is to say about their thinness, whether you could see the stencil marks through them or not?

A. The ballots that were returned, was on transparent paper, and all that came before us we could see the device and see the stencil marks.

Q. You say in one precinct there were about forty?

A. There was forty-two, with pasters, and four or five of the ballots that were returned.

Q. Explain what you mean by pasters?

A. In Ward No. 1 of Barbourville the box had forty-two ballots with a paster at the bottom, and I believe that paster read for John H. Wilson for Judge, I believe it was, Twenty-seventh Judicial District of Kentucky, I believe it is the Twenty-seventh. I am not certain.

Q. Can you give an idea to the Board as to how many ballots there were in the other boxes from the other eleven precincts?

A. Well, I think they run from, somewhere along from three to five.

Q. Now you say that you did not pass upon those ballots upon the questions raised; explain to the Board why you did not and how it was that you did not pass upon those ballots?

A. The reason we did not, that we were served with a notice of a mandatory injunction, there was an injunction from the Court to make a certificate.

Q. When did your Board meet after the election first, Mr. Faulkner?

A. We met upon Friday between 10 and 12 o'clock, after the election on Tuesday, the 7th of November.

Q. How long were you in session upon that day?

A. We was in session till, I think, until 6 o'clock in the evening.

Q. Did you adjourn then over to any time?

A. We adjourned until the next day at 9 o'clock, I think.

Q. Did you meet the next day?

A. We met the next day at 9 o'clock.

Q. What occurred on that day, if anything, with reference to your Board?

A. I think the Board proceeded with the work until 12; we adjourned for dinner; we had got through with all the work except Ward No. 1. We had passed that ward, we found those

42 ballots, and we had passed it. We had completed all the work in the State election but that and then we agreed to meet at the Anderson Hotel and listen to an argument from the attorneys on each side. I think the Republican party would have had Mr. Wilsonor someone else, and Mr. Taylor wanted to be heard, and we adjourned to meet at the Anderson Hotel to hear that argument.

Q. Did you hear the argument on both sides, from attorneys on both sides?

A. Yes, sir.

Q. What time did the Board adjourn on that day, Saturday?

A. The attorneys did not close the argument until about seven o'clock in the evening, and that was after night. The Board agreed to adjourn until Monday morning and meet at nine o'clock.

Q. Well, did you meet Monday morning?

A. We did, yes, sir.

Q. What time did you go to town that day?

A. Monday morning?

Q. Yes?

A. About half after eight.

Q. When you got there what was the condition of things in Barbourville? A crowd there?

A. There were from six to eight hundred men upon the public square.

Q. Were they armed?

A. I didn't see any arms.

Objected to as leading.

Q. Where did you hold your meeting on Monday?

A. In the Clerk's office, County Court Clerk's office.

Q. Where was the crowd during the time that you were in the Clerk's office?

A. They surrounded the Court House, on the public square—in our county we have a public square, there is a square all around; the Court House is in the center. I forget how many acres there is in the public square, but there was a crowd on the public square.

Q. Did you hear any threats from that crowd of people, towards anybody, towards the Commissioners or anybody else?

A. Only what my friends told me, I heard nothing myself.

Q. Threats were conveyed to you by your friends?

A. Yes, sir.

Q. You didn't personally hear them?

A. No, sir.

Q. Were your proceedings interrupted or interfered with in any way by any order of anybody?

A. It was by an order of the Circuit Judge of that District.

Q. Was any paper served upon you?

A. Yes, sir.

Q. What was the nature of that paper?

A. The nature of that paper was, it was a mandatory order of injunction. I was to go ahead to make a certificate.

Q. I show you this paper and ask you whether that is the one which you refer to that was served on you—first, was there more than one paper served upon you?

A. Yes, sir, that paper was served upon me in less than ten minutes after I got off my horse.

Mr. Breckenridge. When was it he said it was served on him?

Q. That morning as soon as I came in town.

Mr. Sweeney. That was on Monday morning?

A. That was on Monday morning the 13th.

Mr. Hendrick. While they are examining that exhibit or order, I desire to ask you a question. You stated, in answer to Mr. McQuown, that you could read the marking, the stencil marking under the devices; do you mean that you could read it when the ballot was folded?

A. Yes, sir, in examining the ballots, the ballot was folded, of course I could see the device and read the head of the ticket; I mean the Democratic ticket, or Prohibition ticket, or—

Q. You could see marking under it?

A. Yes, sir.

By a Committeeman. You mean the stencil marks?

A. Of course I could see the stencil mark, I could read that plain.

By Mr. McQuown. I want to read this paper, and offer it in evidence. I will just read it. It is a short paper:

KNOX CIRCUIT COURT.

William S. Taylor, Plaintiff, vs. W. S. Woodson, D. B. Falkner, and John D. Jarvis, being and constituting the County Board of Election Commissioners for Knox County, Ky., Defendants.	}	Order of Injunction.

The Commonwealth of Ky.—Greeting:—

On motion of the plaintiff and on the averments of the petition it is ordered as follows:

That the defendants W. S. Woodson, D. B. Faulkner and John D. Jarvis, acting as members of the County Board of Election Commissioners of Knox County, Kentucky, and the said Board of Election Commissioners of Knox County, Kentucky, immediately assemble in the office of the Clerk of Knox County Court, and canvass the returns made by the officers of election of Knox County, with respect of the election held on the 7th day of Novem-

ber, 1899, and therefrom to ascertain and determine the result of said election held in said County, and make due certificate thereof in writing over their signatures, which said certificates shall be in duplicate or more, one copy whereof they shall deliver in the Clerk's office to be retained therein, and another copy thereof shall be delivered to the County Court Clerk of Knox County, to be by him sent by the next mail, under cover, to the Secretary of State at the seat of government.

At one o'clock p. m., on this day, to-wit, November, 1899, at the Court House in the town of Barbourville, Knox County, Kentucky, the plaintiff will move the Judge of this Court to grant an injunction pursuant to the prayer of the petition herein, and until said motion shall be heard and determined, this order shall remain in full force and effect.

The injunction bond is fixed at five hundred dollars.

Witness J. R. Jones, Clerk of the Knox Circuit Court, this November 13, 1899.

J. R. JONES, Clerk.

Q. When that was served upon you, was there a like order served upon the other members of the Board?

A. Yes, sir.

Q. What did the Board do then?

A. They immediately met at the Clerk's office, went ahead with the work, worked up till twelve o'clock, and adjourned for dinner, came back again after dinner and one o'clock they were taken before the Court.

Q. You say you were taken, who took you?

A. I mean we were ordered to appear before the Court.

Q. You mean this order of injunction that was served on you, the restraining order?

A. We obeyed that order.

Q. You went then to the Court?

A. Yes, sir.

Q. Was Judge Brown there?

A. Judge Brown was there, sir.

Q. What attorney was representing the plaintiff in that case?

A. Mr. Faulkner and Tinsley.

Q. Was there any other attorney there?

A. Mr. Craft, Mr. Joe Craft.

Q. Was he representing the plaintiff also?

A. Well, I couldn't say that he was, but he was there present.

Q. How long were you detained at the Court House before the--

A. I think until about seven o'clock in the evening.

Q. Did the Judge hear arguments, did that detain you that long?

A. When we met before the Judge the affidavits of the plaintiffs were all prepared, there was a good deal of work done, they prepared their affidavits and presented them to the Court, and if

there was any argument I had left the court room; I think it was on the side of the plaintiff; none from the—

Q. Then was another paper served upon you?

A. Yes, sir.

Q. Examine that and see whether that is the other paper?

A. This is the paper.

By Mr. Bradley. Have you the petition in the case?

By Mr. McQuown. No, I have not.

Thereupon the contestee objected to all of this evidence and asked that it be stricken out; said objection being overruled.

Mr. McQuown read the order, as follows:

KNOX CIRCUIT COURT.

W. S. Taylor, Plaintiff, vs. W. S. Woodson, D. B. Faulkner and John D. Jarvis, being and constituting the County Board of Election Commissioners for Knox County, Kentucky, Defendants.	Order of Injunction and Mandatory Injunction.

The order of temporary mandatory injunction granted by the undersigned Judge of the Twenty-seventh Judicial District having been returned by the Sheriff of this county duly executed on the defendants and each of them on the forenoon of to-day and the said order having fixed the time and notice of the time and place at which the plaintiff would move the undersigned Judge of the Twenty-seventh Judicial District for the injunction as prayed for herein, and the plaintiff having at the time and place so fixed appeared and entered his motion for a mandatory injunction and filed in support thereof the affidavits of J. H. Tinsley, H. C. Faulkner, J. A. Craft and John A. Black, and the defendants having appeared in person and by counsel and filed the affidavits of W. S. Woodson, John P. Jarvis and D. B. Faulkner and their supplementary affidavit resisting said motion, thereupon said motion came on for hearing.

Thereupon the counsel for defendants, Hon. J. D. Black and S. B. Dishman protested against any further action by the undersigned in the name of the defendants and the Democratic party and retired from any further proceedings of the case.

The Judge then heard read the affidavits of J. H. Tinsley, H. C. Faulkner, J. A. Craft and John A. Black and the petition herein and considered of the affidavits filed by the defendants against the motion as aforesaid and of the petition and of the motion and being advised, is of opinion and orders that a manda-

tory injunction be granted herein in accordance with the prayer of the petition.

It is therefore ordered that the defendants, W. S. Woodson, D. B. Faulkner and John D. Jarvis, being and constituting the County Board of Election Commissioners of Knox county, at once canvass the returns of the election held in Knox county, Kentucky, on November the seventh, eighteen hundred and ninety-nine, and they are ordered and directed to ascertain and determine the number of votes cast in Knox county, Kentucky, for plaintiff, W. S. Taylor, and for each candidate voted for at said election on the Republican State ticket from the certificates of the election officers of the several precincts of said Knox county, and such ascertainment and determination shall be made by canvassing the returns made by the election officers in said county in their certificates aforesaid. Upon such ascertainment and determination they will, in writing, signed by themselves officially, certify the result and deliver their certificates thereof according to law.

This order they will in nowise disregard and same shall be in full force and effect until the further order of the Knox Circuit Court. To all of which the defendants, W. S. Woodson, D. B. Faulkner and John D. Jarvis, object and except.

Given under my hand, as Judge of the Twenty-seventh Judicial District, this November 13, 1899.

(Signed) W. L. BROWN, Judge,
Twenty-seventh Judicial District of Kentucky.

A copy.
Attest:
J. R. Jones, Clerk.

Q. Now after that was received what happened then?

A. We went ahead and made the certificate according to that order.

Q. Who was present at the time you were making that certificate—any attorney for the plaintiff?

A. The County Court Clerk, and Mr. Craft was present. Mr. Craft was one of the attorneys.

Q. Where does he live?

A. Louisville, Ky.

Q. Is he an attorney for any railroad, or corporation of any sort?

A. I understood from Mr. Craft himself that he was attorney for the L. & N. Railroad.

Q. Does he not live at Barbourville?

A. No, sir.

Q. Did he write, or have anything to do with writing, or dictating the certificate, or return that you made?

A. He had nothing to do with the writing of the certificate.

Q. Did he have anything to do with it by way of dictating its contents?

A. Yes sir, I think he did.

Q. What did he say and do?

A. The Commissioners wanted to make an explanation, and wanted to show that we had made the certificate under that injunction and he refused, and he said that we must make it according to the order of the Court, and so we done it.

Q. What, if anything, did he say would happen if it was not made by the order of Court?

A. He said to Mr. Woodson, that if he was Judge he would see that we did exactly what he said.

Q. Did either of your gentlemen propose to say anything or put anything in that certificate, or to attach to it any ballot?

A. Yes, sir.

Q. What for?

A. We didn't feel like we were authorized to decide upon the character of the ballot, and we wanted to mark and attach one of those ballots, and let it come before the State Board for their action.

Q. Why didn't you do it in that way?

A. Because we was kept from it by this injunction from the Court.

Q. Why did you want to attach one of the ballots to it—what was the question in the minds of the Commissioners?

A. We had these 42 ballots before us, with these pasters on them, and they came before us counted or questioned, and we did not feel like our Board ought to decide upon it, and we proposed to make the certificate and attach one of these ballots, and let a higher authority decide upon whether it was a legal ballot or not.

Q. In the meantime what had become of these people that you spoke of that were in town about half past eight when you got there that day?

A. They were still there. They were there up until dark, and up as late as ten o'clock at night.

Q. Do you know whether any of them were brought there by a special train from any other place over the L. & N. Railroad?

A. I don't know of my own knowledge; only from what my friends told me.

Q. What time was it that you finally made the certificate as indicated by you and Mr. Craft?

A. I think something near eleven o'clock at night.

Q. Where were you when you were deliberating and making this certificate?

A. In the County Court Clerk Office.

Q. How long did Mr. Craft stay there with you?

A. He remained there until the certificate was sealed and delivered to the Clerk.

Q. He is the man whose name is mentioned in that last order as one of the affiants—whose affidavit was read?

A. Yes, sir.

Q. I will get you to state to the Board whether or not you would have signed or certified the result of that election, as you did, except for the Court, and the mandatory order of the Court?

A. I would not.

Q. It was not according to your judgment?

A. No, sir.

Q. Was that a boisterous or quiet crowd?

A. No, sir, it was a tolerably quiet crowd for as large a crowd as it was. There was a good deal of loud talking. I can't say but what it was a very quiet crowd. The trouble was the whole square was full; a man could hardly pass along the street.

Q. Wasn't it openly carried around the crowd, and through the town, that they were going to hand you?

Contestees object to the question as leading.

Q. State whether or not it was currently rumored and reported through the town of Barbourville that the Commissioners would be hung unless they signed the certificate?

Objected to by counsel for contestee. After argument by counsel and by members of the Boards, the question was submitted to the vote and upon a vote being taken the objection of contestee was overruled by the Court.

A. It was.

Q. You say the certificate was signed about what time in the night?

A. About eleven o'clock.

Cross-examined for contestee by Governor Bradley.

Q. You say, Mr. Falkner, that you could see these ballots when they were folded—could see the stencil marks?

A. Yes, sir, those that came up in the ballot box.

Q. Will you please take this ballot and fold it, and show it to me how you can see it?

A. This is the general way, Governor Bradley, they are folded. You can't see the device through this paper, or see the stencil mark. In examining the ballots I didn't know anything about that.

Q. You can't see that stencil mark there?

A. No, sir, I didn't say I could see that.

Q. I asked you to fold the ballot and show me how you can see the stencil mark on it? I understood you to say that when the ballots were folded you could see the stencil mark from the outside?

A. I say this that in some of the ballots that I examined I could see the stencil marks, but I don't see it here. I don't see very well.

By counsel for contestee. Then we ought not to take testimony except in daylight.

Q. Now what shape do you fold that in to put it in the ballot box?

A. Governor, I have never been an officer of election, and I don't know.

Q. You say that you were informed that that mob was in town for the purpose of hanging the Commissioners if they did not sign this certificate?

A. Yes, sir.

Q. How did you find out that rumor?

A. We met upon Friday night, and adjourned over until Saturday, and then we adjourned until Monday; and on Monday I was met two miles from Barbourville by men, and they told me to be very careful—to be very careful; I was informed that there was—

Q. Have you any of those men here?

A. No, sir.

Q. Have you a single witness here that informed you that there was any danger from that mob?

A. No, sir, I don't know that I have. This is not my case.

Q. In that case did you file an answer?

A. Yes, sir.

Q. The case before Brown?

A. Yes, sir.

Q. Did you hear that answer read before you filed it?

A. Yes, sir.

Q. Who was your attorney?

A. Mr. Black.

Gov. Bradley. If your honors please, I desire to introduce this answer, and I desire to read it.

Counsel for contestant object to the filing and reading of said paper.

Q. That answer was filed after you heard these threats, wasn't it?

A. No, sir, our answer was made after the certificate was made. We were notified to appear at the first day of the December Court. That suit of Gov. Taylor against the Commissioners at Barbourville has never been decided. We filed answer to that since that time. Our answer to that petition was after we made the certificate. That suit is still against us.

Gov. Bradley. I will read the answer.

Chair rules that the answer may be read.

Said answer is as follows:

KNOX CIRCUIT COURT.

William S. Taylor, Plaintiff,
vs.
W. S. Woodson, D. S. Faulkner, and John D. Jarvis, constituting the County Board of Election Commissioners for Knox County, Defendants. } Answer.

I.

The defendants, W. S. Woodson, D. B. Falkner, and John D. Jarvis, who constitute the County Board of Election Commissioners for Knox County, for their answer to the petition in this action admit they duly assembled as such Board in the Knox County Clerk's Office in Barbourville, Ky., between the hours of 10 o'clock a. m. and 12 o'clock m. on Friday, November 10th, 1899, for the purpose of canvassing the returns of the election held in said County on November 7th, 1899, and that said Board adjourned from day to day until Monday, the thirteenth of November, 1899. But they say it is untrue and they deny said Board unlawfully failed or refused to perform any of its duties, or that these defendants failed or refused to perform any of their duties required by law. They deny said Board failed or refused to count the vote or that it pretended to enter or did enter on order or resolution adjourning said Board without any action whatever. They deny said Board had, when it adjourned until Monday 13th, 1899, ascertained the number of votes cast at said election for all the candidates voted for by the people of Knox County. They suppose it is true that it was the duty of said Board to certify the number of votes cast at said election in said county for the various candidates voted for, but they deny they ever failed to do that or refused to do so.

The defendants say it is untrue and they deny said Board, not regarding its duty in the premises, failed or refused to make such certificate, or that it pretended to adjourn or did in fact adjourn without day and they deny said Board did not regard its duty in the premises. They admit, however, said Board had not made any certificates at the time it adjourned as aforesaid, until November 13, 1899, and they say it had not done so for the reason it had not the time to do so after performing the work done by it up to that time. The defendants deny no ballots were certified by said election officers or returned to the office of the Clerk of the Knox County Court from any precinct or balloting place in said county, to have been counted in part or in whole. On the contrary, they say there were ballots returned to said office from such balloting place and certified by the election officers as having been counted

and which were returned and so certified as questioned ballots. The defendants say it is untrue and they deny said Board was, when the petition in this case was filed, or that it ever was, assuming that it had, or that these defendants had the power to throw out the whole vote of the county given to plaintiff, or to him and any of the others on the ticket with him or any part of said vote. And these defendants further say it is untrue and they deny they or said Board were, when said petition was filed or at any other time, about to throw out the whole or any part of said vote; and they deny they would unless prevented by this Court, or any Court, or any order of this Court, throw out the whole or a large part of said vote, and they deny no ballots were certified to them by the election officers as having been counted or counted in part or not counted. They deny said Board had or has the power to do anything other than to certify from the said returns the result of said election in said county; and they deny said Board was, when the said petition was filed, or at another time, about to adjourn without certifying the result of said election in said county; and they deny said Board would have adjourned unless compelled or directed by the order of this Court to certify the result of said election, or that it would have failed or continued to fail or refuse to perform any of the duties in the premises or otherwise. They say it is untrue and they deny any action of any Court was necessary to require said Board to perform any of its said duty, or that any vote cast at said election in said county would have been lost or any vote of said county disfranchised by any failure of said Board to discharge any of its duty.

On the contrary, the defendants for further answer say, that they all the time desired, from the time they began on the morning of November 10th, 1899, as aforesaid, to fully complete the work of said Board in canvassing and certifying the returns of said election as rapidly as they could, and but for the interruption of said work, which was caused by certain friends of plaintiff requesting of said Board permission to be heard in argument before the Board upon certain matters pertaining to the work before the Board and which request was granted by the Board, said Board would have been able to complete and would have completed its work much sooner than it did so complete it. They say said argument consumed the whole of the afternoon of Saturday, November 11, 1899, and which it was closed defendants intended to then immediately to repair again to said Clerk's office to take up their work where they had left off when said argument had begun, but the said office was locked and defendants were informed by the County Court Clerk that office hours for that day had closed, and thereupon said Board adjourned to meet at 10 o'clock A. M., November 13, 1899, and which was Monday. The defendants did not think proper to work elsewhere except said office where all the returns of said election were, and they did not

think it incumbent upon them or any duty they owed to plaintiff to break the Sabbath by working at said election returns on Sunday, November 12, 1899, and hence they say they passed for completion on Monday the work required of them by law.

On Monday morning, November 13, 1899, said Board met in said office pursuant to adjournment and then and there took up in good faith the unfinished part of its duty as said Board, and this action was then commenced against the defendants. They deny plaintiff or any person had any cause of action against them or against said Board or any just cause of complaint; and they deny plaintiff had or ever had any right to an injunction of any kind against them on said Board.

Wherefore they pray the Court to dismiss the petition and to dissolve the orders of injunction herein. They pray for their costs and all other proper relief.

James D. Black,
Att'y for Defts.

W. S. Woodson, D. B. Falkner, and John D. Jarvis say they believe the statements of the foregoing answer are true.

Subscribed and sworn to before me by W. S. Woodson, this December 6, 1899. J. R. Jones, Clerk.

State of Kentucky, }
County of Knox, } Sct.

I, J. R. Jones, Clerk of the Circuit Court, for the County and State aforesaid, do hereby certify that the above and foregoing five pages of typewritten matter contains a true and correct transcript of the answer in the case of William S. Taylor, plaintiff, against W. S. Woodson, D. B. Falkner and John D. Jarvis constituting the County Board of Election Commissioners for Knox County, defendants, as now appears of the records in my office.

Given under my hand, as Clerk aforesaid, this the fifteenth day of January, nineteen hundred. J. R. Jones,
Clerk Knox Circuit Court.

Objection to the filing of said paper was withdrawn.

Gov. Bradley. This is sworn to December 6th; it seems that the statement is that James D. Black appears as the attorney.

Q. You said something about Mr. Craft, Mr. Faulkner, how long have you known Mr. Craft?

A. I have known Mr. Craft, I expect, twenty years.

Q. Do you know where Mr. Craft commenced practicing law?

A. I can't state.

Q. Do you not know that for many years he was a practicing lawyer at London?

A. Yes, sir.

Q. A partner of Judge Lloyd?

A. No, sir; I don't know.

Q. I will ask you if you do not know that he has been a practicing lawyer in your district for a great many years?

A. I am not a lawyer myself.

Q. Did you see him about your court?

A. Not for several years.

Q. Has he not been practicing up in that country since he went to Louisville?

A. I can't state that.

Q. Is this the only time you ever saw him there?

A. No, sir.

Q. He was a practicing lawyer in the Knox Circuit Court?

A. I could not state.

Q. You saw him in Barbourville more than this particular time?

A. Yes, sir.

Q. You saw him frequently?

A. No, sir.

Q. During the terms of the court did you see him there?

A. No, sir, not for several years.

Q. Did you go to town often?

A. No, sir.

Q. How many times did you see him after he went to Louisville?

A. I don't remember ever seeing Mr. Craft in Barbourville at our court since he went to Louisville.

Q. You don't recollect that certainly?

A. No, sir.

Q. Now, Mr. Craft, how many votes were there that you gentlemen thought you ought to certify that has this piece of paper pasted on to them in all?

A. I think there were 42 with pasters.

Q. I will ask you the question if your Board had any question about counting the entire vote except these ballots?

A. That was the question that was before the Board. As I stated in my statement at the start, when we opened the ballot box of the First Ward we found these ballots, with the forty-two pasters, that were voted for Mr. Wilson, and we passed them.

Q. And that was all of it?

A. That was all of our contention except about the transparent ballots.

Q. Did you ever for a moment consider that you would not count the ballots?

A. No, sir, we were going to attach one of the ballots to the certificate before I would have signed.

Q. The only difference you would have made in your certificate would have been to attach a ballot to it—one of the paper ballots, one of the ballots that you stated had a paster on it—so many ballots?

A. Certainly.

Q. But you had counted them, and certified that fact up to the Board for them to count?

A. Yes, sir.

Re-examined by Mr. Ollie James.

Q. You were also going to certify as to the transparency of the ballots?

A. Certainly. The ballot would have shown that naturally.

Q. And the purpose was to attach a ballot so as to show, not only the paster with John H. Wilson's name on it, but also the transparency of the ballots?

A. Certainly.

Q. And the election was conducted throughout the county on that ballot?

A. Yes, sir.

Re-cross-examined by Governor Bradley.

Q. Did I understand you to say that you were simply going to attach a ballot to it, and say to the Board that this is the character of the ballot that the forty-two pasters were on?

A. Yes sir, certainly.

Q. That was all there was on it?

A. Yes sir.

Re-examined by Mr. Ollie James.

Q. When you say that was all of it you don't mean to say that the Board was not to consider the fact of the thinness of the ballot?

A. No sir.

It is agreed between counsel that Henry Cassin appeared and produced the following order, and the Louisville Post of date, Tuesday, October 3rd, 1899, containing an article on the subject of Judge Evan's Charge to the Federal Grand Jury, which said order and article are to be considered as the testimony of the said Henry Cassin, to-wit:

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY AT LOUISVILLE.

Friday, October 13th, 1899.

Court met, present Hon. Walter Evans, Judge.

It is ordered by the Court that the Grand Jury do adjourn until November 13th, 1899.

A Copy Attest: THOS. SPEED, Clerk.

By HENRY F. CASSIN, Deputy Clerk.

The article in the Evening Post is as follows:

Warned by the United States Judge.

Violations of the Election Laws the subject of Judge Evans' Charge.

Explains to the Federal Grand Jury the Statutes that bear on these Offenses.

No United States Officer can interfere, but Suffrage Violators can be Punished.

Laid Special Stress on Any Attempted Disfranchisement of Colored Voters.

Any Men Who Conspire to Deprive Citizens of Suffrage are Guilty.

Duty of the Grand Jury.

At the opening of the criminal term of the United States Court this morning Judge Walter Evans delivered comprehensive instructions to the grand jury upon all offenses they would have to deal with. He commented lightly on the usual Federal offenses, but most of his charge was confined to a review of the election laws of the United States and the punishment for those who violated or attempted to violate them. He did not attempt to disguise from the grand jury that there is everywhere indication that fraud will be attempted, but admonished them not to fail in their duty and punish the guilty.

In conclusion he stated that while no United States officer or official could take any part in this election, which is entirely under the State laws, nevertheless this grand jury could indict and bring to punishment those who violated the Statutes by election frauds. His charge to the jury on the subject of elections was as follows:

"There is a Statute of the United States which prescribes punishment for various offenses meant to protect a certain class of citizens of the United States in the exercises of the elective franchise. Understand, gentlemen, that in nothing that you do should you permit partisan politics to have the slightest influence with you. The grand jury is meant to be one of the most independent of all the bodies of men charged with the administration of the law. It is your duty, and it is mine, and it should be the pleasure of each of us, to administer the law justly, fairly and rightly. In no spirit of partisanship, in no spirit of oppression, but with a spirit guided solely by the desire to observe our oaths and discharge the duty thereby imposed upon us; it is my duty to call your attention to this Statute as to all others, and to explain to you possibly somewhat more at length, because these Statutes are not as familiar to the people generally as others—to explain to you to some extent what these offenses are.

Section 5507, of the Statutes of the Unitcd States, is in this language:

"Every person who, by any unlawful means, hinders, delays, prevents or obstructs or combines and confederates with others to hinder, delay, prevent or obstruct, any citizen from voting at any election in any State, Territory, District, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less than $500, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment."

"Congress has not exercised any power in this Statute except that of enforcing the provisions of the Fifteenth Amendment to the Constitution of the United States. So that this section of the Statute applies solely to the colored man so far as the design of the Statute goes to protect them from any of those things that are denounced as crimes by the Statutes. You will observe, therefore, that this section has reference to the colored man, and this is a part of the act known as the Civil Rights Bill, designed to carry into effect the rights given to him by the Fifteenth Amendment to the Constitution of the United States. With the explanation you will understand that every person who prevents a colored man from voting by means of intimidation of bribery is guilty of an offense against the laws of the United States.

"You will observe that every man who hinders a colored man from voting by means of bribery or intimidation, is guilty of an offense against the laws of the United States. You will observe that any man who controls a colored man in the exercise of the right of suffrage is guilty of an offense against the laws of the United States, if he is controlled by means of bribery or intimidation, and every man who intimidates any colored man from exercising, or in the exercise of the right of suffrage guaranteed to him by the Fifteenth Amendment to the Constitution by means of bribery or intimidation, is guilty of an offense against the laws of the United States.

"You will observe that any man who controls a colored man in the exercise of the right of suffrage is guilty of an offense against the laws of the United States, if he is controlled by means of bribery or intimidation, and every man who intimidates any colored man from exercising, or in the exercise of the right of suffrage guaranteed to him by the Fifteenth Amendment to the constitution by means of bribery or intimidation is guilty of an offense against the laws of the United States.

"Now you will observe, too, that the Statute is very broad in its language, and I say to you, gentlemen of the jury, in cities like this and in other cities in the State of Kentucky, where registration is required as an act precedent to the right to vote, that this Statute would embrace any prevention of registration, any

hindering or controlling of registration by means of bribery or intimidation, because, if he does not register he can not vote, and it would be absurd and ludicrous to hold this Statute to refer merely to the day of the election, where he would be deprived of voting, not by intimidation or the use of money, but by the fact that he had not registered, and yet to say that it did not apply to the registration itself. So that I instruct you that it is an offense against the laws of the United States for any man or any set of men, by means of bribery or intimidation, to prevent, hinder or control any colored man in registering as the preliminary requisite to voting at the election.

"And I will say to you further that this statute does not apply to Congressional elections nor to Presidential elections only. It applies to all elections in which the colored man has the right to vote. It was enacted for the purpose of guaranteeing to the colored man the right that the people had given him under the fifteenth amendment to the Constitution of the United States.

"And we must look into this question, gentlemen of this jury, from a broader standpoint than any to which I have adverted.

"It is fortunate, possibly, certainly it is not a misfortune, that the Federal Court has this much power. It is no calamity to the country, not to the liberties of the people, that as many courts as possible have jurisdiction to punish offenses against the elective franchise, for the reason that the government of the United States or the governments of the States and all the governments of municipalities, are based at last upon the free expression of the will of the people through the ballot, and any machinery that may be provided anywhere that can materially assist the ballot-box that can materially aid in a free, fair and full expression of the will of the people is useful and beneficial to the public, not for the purpose of oppressing any one, not for the purpose of depriving any man of the right of suffrage, not for the purpose of influencing any man to vote any other way than as he pleases, but simply to protect him in doing what he desires to do as a voter, to give to him the right to vote as he pleases, and to punish any man who by means of intimidation or bribery, prevents him from voting as he pleases.

"So that whatever others may do, it is the duty of those charged with the enforcement of the law to look to the law as it is, and to see that those who are guaranteed protection by the law, should have it, and that those who violate the law are punished.

"With the punishment alone have we anything to do. The government of the United States can not interfere and does not by these statutes in the slightest degree interfere with the conduct of any election. The election all over our State is conducted under the laws of the State exclusively, and no officer of the United States has the least right to interfere with the election as it progresses. All that these sections to which I shall call your atten-

tion is to provide punishment against evil-doers if they violate the laws of the United States.

"These laws, like all laws, are to operate upon acts that have been done and to restrain the doing of criminal acts by the fear of the enforcement of the laws, and whenever the law of the United States shall be systematically disregarded because the men charged with the execution of these laws violate their oaths and do not enforce them, it will be a sad day for the government. The government of the United States is to be perpetuated, if at all, by an honest, vigilant enforcement of the laws that Congress makes for the protection of the people.

"There are one or two other sections to which I shall call your attention in the same connection :

"Section 5508. If two or more persons conspire to injure, oppress, threaten or intimidate any citizen of the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office or place of honor, profit or trust created by the constitution or laws of the United States."

"Furthermore, there is quite an important Section, 5509, which provides that if in the act of violating any provision in either of the two preceding sections any further felony or misdemeanor be committed, the offender shall be punished as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed.

"And, gentlemen, let me say, in reference to this statute that the period of limitation that bars a prosecution of a crime is three years. So that if within three years last past you find anyone guilty of any of these offenses, or any of the others to which I shall allude, they are subject to indictment if you think there is reasonable ground of their conviction.

"Now, it is an offense against the laws of the United States to conspire to do anything which I have alluded to under the other section and the conspiracy must be engaged in by two or more persons before it is a conspiracy.

"I have known, and so have you heard, of many instances where there was a conspiracy by means of which persons were prevented from exercising the right of suffrage by means of bribery. For example, I take it, if you were to find anywhere that ten or fifteen or one hundred of these colored men had been, by means of bribery, induced to go into a house for the purpose of being kept from voting, that would be conspiracy, if engaged in by one or more persons. If any of these things are done by

mere persuasion it is no offense against the laws of the United States. A can persuade B to do this by any means except to bribe or intimidate him, but those things are entirely within the liberties of the people if done by persuasion. That is what we endeavor to do to persuade our fellow-citizens to do with us on these questions. There is no offense there. The offense consists in doing these things by means of bribery and intimidation."

J. D. Kirk, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. State, if you please, your name, residence and occupation?

A. J. D. Kirk is my name; my residence is Inez, Martin County, Kentucky.

Q. Are you the County Clerk of that county?

A. Yes, sir.

Q. Have you any ballots that were used in the last election, Mr. Kirk?

A. Yes, sir.

Q. Will you produce it?

A. Yes, sir.

Q. Did you have the ballots printed for your county, Mr. Kirk?

A. Yes, sir.

Q. Where did you have them printed?

A. Catlettsburg.

Q. At what printing office?

A. The Pawpaw printing office.

Q. Is that one of the ballots that was used in your county?

A. Yes, sir.

Q. Is that the only one you have?

A. That is the only one.

Q. Were they all like that, Mr. Kirk, or not?

A. Yes, I think so; I never saw any difference in them; I never noticed any difference in the ballots.

Q. Did you have any more ballots in the office?

A. No, sir; there was only two ballots returned with the stub-books, and the County Commissioners, they had charge of them, and when they turned them back over to me, that was the only ballot that was in with them; I don't know what went with the other ballot.

Q. What is your politics, Mr. Kirk?

A. I am a Republican.

Q. How long have you been Clerk of Martin county?

A. For twenty-odd years; I don't remember exactly.

Q. Twenty-odd years?

A. In all—yes, sir.

Q. (By Chairman Hickman.) How long have you been Clerk—for thirty-odd years?

A. Yes, sir; twenty-odd years.

Q. Twenty-odd years?

A. Yes, sir.

Cross-examined by Mr. Sweeney.

Q. This ballot that you have here is a fair sample of the ballots that were used in Martin county, is it not?

A. Yes, sir.

Q. You simply sent out your order, like County Clerks ordinarily do, for the ballots, and they were sent you printed upon this paper?

A. Yes, sir; the same man has printed our ballots ever since the ballot system was in effect.

Q. Your county is a Republican county, is it not?

A. Yes, sir.

Q. About what is the average Republican majority in your county for the past few years, State or Presidential race?

A. Well, this year I think it was 473.

Q. 473?

A. Yes, sir.

Q. That about the average Republican majority in the county, in State or Presidential elections?

A. Yes, sir; we have given one bigger majority than that; we gave Gov. Bradley 504, I think.

Q. How was it compared with the McKinley vote?

A. Well, it was about the same; there wasn't but a very few votes difference.

Q. About the same?

A. Yes, sir; I don't remember the exact number of votes.

Q. Examine that ballot and see, if it is properly folded, if you could see anything about the stencil mark on it, or where there is any stencil mark—well, take one fold; could you see where there is any stencil mark there?

A. No, sir.

Q. You can't?

A. No, sir.

Q. Holding it even between you and the light?

A. No, sir; I can't see it.

Q. (By a member.) In folding it just as you have held it, is there not a light behind you?

A. Yes, sir; I think so. I didn't observe it at that time, but I observe there is now.

Re-direct examination by Mr. James.

Q. There is a lot of writing on the back of that ballot, isn't there?

A. Yes, sir.

Re-cross examined by Judge Yost.

Q. What precinct do you live in?

A. I live in Eton Precinct.

Q. What is the number of it?

A. No. 3.

Q. (By a member.) Is the stencil mark on the ballot you have just referred to, in the device—in the square under the device?

A. Well, I don't know.

Q. I wish you would examine and see?

A. No, sir; it ain't in the square the device is in.

Q. (By Mr. Sweeney.) I will ask you if the paper where the stencil mark is, isn't just the same as the paper under the device?

A. I think so—yes, sir.

Dr. A. D. Spear, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. State your name, where you reside, and what is your occupation?

A. A. D. Spear, Inez, Martin county, Kentucky; dentist.

Q. Did you have any official connection, in any way, with the election held last November?

A. I was a challenger.

Q. At what precinct?

A. At precinct No. 1.

Q. In Martin county.

A. Yes, sir.

Q. Is that in the town of Inez?

A. No, sir; that is what they call the Elk Precinct.

Q. How far from Inez?

A. Well, it is about six miles, I suppose.

Q. Were you at your precinct that day?

A. Yes, sir.

Q. What kind of ballots were used there; that is to say, were they, or not, transparent?

A. Well, the ballot I used was very thin; I could see the device through it.

Q. What about the stencil mark?

A. Well, you could see the stencil mark.

Q. Well, from the back when it was folded, or how?

A. Well, I just folded my ballot once, and I don't remember looking through it when it was folded twice, about seeing the stencil mark then.

Q. Well, now, do you know whether, during the progress of the election at your precinct, the officers of the election saw and observed how the various persons voted, from the back of the ballots?

A. Well, I seen how one voted.

Q. Well, in what position was the ballot when you observed that?

A. It was being handed to the Judge, or whoever received the ballot.

Q. Did you see it from the back of the ballot?

A. Yes, sir.

Q. Not from the front at all?

A. No, sir.

Q. It wasn't exposed that way?

A. No, sir.

Q. Do you know whether any of the other officers observed the way votes were cast, from the back of the ballots at that precinct, and what occurred there?

A. No, sir; I don't know that I could state whether they did, or not.

Q. Do you know it from what any of them said to you?

Objected.

By Mr. Hickman. In the voting booth?

By Mr. James. Yes, sir; what the officers said, right there, at the time they were holding the election.

Q. By Mr. James. Go ahead and answer?

A. I don't remember the way that was, but I remember speaking about this ballot that was voted—told them how the man voted, or how the vote was cast—how it was voted.

Q. Doctor, have you any of the ballots that were used in that county?

A. No, sir.

Q. Have you seen any of them?

A. Yes, sir.

Q. How many of them have you seen since the election?

A. Well, I have seen one.

Q. Who had that?

A. Mr. Kirk had it, the Clerk; I supposed it was one of the ballots.

Cross-examined by Mr. Sweeney.

Q. You are a Democrat, I believe, Doctor, are you?

A. Yes, sir.

Q. Voted the Democratic ticket—the Goebel Democratic ticket?

A. Yes, sir.

Q. About how long had you resided in that county previous to the election, Doctor?

A. Well, about ten or eleven years.

Q. I will get you to examine the ballot, not on the inside, but as it is folded now, and see if you can find where the stencil mark is?

A. I don't believe I can.

Q. By Mr. McQuown. It is just at the fold, is it not—if you will open it and examine it, isn't it—just where it is folded?

A. Yes, sir; I think our ballots were voted this way (indicating.)

Q. Mr. Sweeney resumes. Doctor, I will get you to state if you did not state to one A. J. Kirk, that the only ballot you saw besides your own, was one ballot that fell open as the voter handed it in?

A. I didn't state that it fell open—it was partially open.

Q. Partially open?

A. Yes, sir.

Q. And you saw the stencil mark?

A. Yes, sir.

Q. Not through the paper, but because the ballot was open?

A. The ballot was just one fold that I seen through; but it was in the light and I could see it.

Q. And partly open?

A. Yes, sir; a little bit open.

Q. Was that the only one that you saw—didn't you state to Mr. Kirk, that that was the only one that you saw, besides your own?

A. Besides my own, those two ballots, that is the only ballots that I noticed.

Re-direct examination by Mr. McQuown.

Q. Doctor, did you see the stencil mark from the back or the front of the ballot?

A. I seen the stencil mark from the back.

Q. Didn't you state the ballot was partially open when you saw the stencil mark?

A. If you get a ballot—have you got a ballot, and I can show you.

Q. Answer the question?

A. I was sitting in this position, and the ballot was up there like that, and there was a window there, but it was back of the Judge, and I seen through the ballot just about so much, and seen the devices, and seen where the stencil mark was.

Q. You had it then up against the light?

A. Up against the light—yes, sir.

Q. And you were back in the dark?

A. No, sir; I was back, not in the dark, but I was in the house looking—I was looking at the window there.

Q. There was a window back of you, was there?

A. Back of me?

Q. Yes, sir; the window was in front of you?

A. The window was in front of me.

Q. No window back of you?

A. I don't remember; I don't think there was.

J. F. Stanfill, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. What is your name?

A. J. F. Stanfill.

Q. Where do you live, and what is your occupation?

A. I live at Barbourville, Ky.; and I am clerk in a retail grocery store.

Q. Were you at Barbourville at the election?

A. Yes, sir.

Q. How long have you lived there, Mr. Stanfill?

A. In Barbourville?

Q. Yes, sir; and in Knox county?

A. I have lived in Knox county 31 years; I have lived in the town of Barbourville for a little over 10 years; something over 10 years.

Q. Were you an officer at the election, of any kind?

A. Yes, sir.

Q. What?

A. Judge of the election.

Q. In what precinct?

A. In the Third Ward, I believe it was, in Barbourville.

Q. What kind of ballots were used at your precinct at that election; I mean as to being transparent?

A. Well, they were thin ballots—partially transparent.

Q. Do you know whether or not a person could see how the vote was cast, by observing the stencil mark from the back of the ballot?

A. Yes, sir.

Q. How many of them did you see and know how the votes were cast?

A. All that I tried to see; all that I wanted to look at; all that I cared to look after, sir.

Q. Were you in Barbourville on Monday next following the election?

A. Yes, sir.

Q. Was there any unusual crowd there that day?

A. Yes, sir.

Q. What size crowd, and how early did they get there?

A. Well, I live over in South Barbourville, possibly a quarter of a mile from my store, which is on the corner of the public square. At that season of the year I think I get there usually before six o'clock. When I got over to the town there were quite a number of fellows in town, strangers, I learned afterwards from a good many of the men that were there, coming into the store to buy something for breakfast. They came in on the early train due there at 4:25, from North Jellico—Gray Station.

Q. About how many were there at that time upon the streets?

A. At that time in the morning?

Q. Yes; about how many of those strangers do you—about how many of those strangers that you refer to?

A. I could not be positive of how many, but I would place it anywhere from 75 to 125—75 place it.

Q. Now, was that crowd increased any during the day; if so, what time?

Counsel for contestees move to strike out that part of the witness' testimony that refers to what the people told him in his store, as hearsay testimony.

By a member: I move that it be stricken out.

By the Chairman. Let it be stricken out.

Q. Mr. Stanfill, I will ask you if that crowd was increased any during that day; and if so, to what extent was it increased, about; of course, you don't know exactly how many people were there?

A. Well, sir, about 8 o'clock they commenced coming into town, more than usual for the second Monday in the month.

Q. Was that any public occasion, or County Court day; anything of that sort?

A. No, sir; they kept coming into town; I judge the crowd would be about—I would place it about 800; I could not state positively about that.

Q. Were they, or not, armed, do you know?

A. I could not say positively about their being armed.

Q. Could you distinguish the prints of their pistols under their clothing?

A. I don't think I could be positive about that.

Q. Well, how long did they all stay there?

A. Well, sir, about 4 o'clock in the evening part of them went away on a special train towards North Jellico. Now, I can't say positively that they did, they went to the depot, they left the Public Square about 4 o'clock in the evening, and from 4 o'clock on up until dark they dispersed a few along at a time until the crowd got away by dark, the principal part of them.

Q. Did you hear during that day any threats made against the Commissioners, or was it reported or rumored amongst the crowd that threats were being made or had been made against the Commissioners, if they did not make up certain kinds of certificates?

Objected to; overruled and exception.

A. Repeat the question.

Q. Did you hear any threats made by any one in that crowd that day, or did you hear of threats having been made against these Commissioners, if they did not certify the result of the election, in any way, one way or the other?

A. That was the rumor, but I could not say positively, of my own knowledge. I could not say, gentlemen, because I don't know about it.

Q. You say it was the rumor—did you hear it rumored through the people of the town, that were in there, and about the town that day?

Objected to; overruled and exception.

A. I could not state that.

Q. Well, you say you heard the rumor?

A. Yes, sir.

Q. How often, and from whom did you hear it?

A. That is what I say; I could not state positively from whom I did hear it.

Q. You can't state the person?

A. No, sir.

Q. Did you hear it frequently, or not, during the day?

A. Well not, not very frequently.

Q. Persons in the store talking about it, or not?

A. Yes, sir; I heard two or three persons in the store, but I could not name them positively.

Q. You were in the store during the day, I suppose?

A. Yes, sir; I was there during all the day, from early in the morning until late at night.

Q. And what you heard was from people who came in the store?

A. Yes, sir; I didn't have time all day to get out on the streets at all.

Q. Where did this crowd seem to congregate together, what part of the town, if any?

A. Well, I could better point out possible, better to show—

Q. No, you will have to describe it, so the Legislature—

A. They were between the County Clerk's office in the Court House and the Anderson Hotel, the principal part of the day; that is, the largest gathering—just east of the Court House. It was on the public square.

Cross-examined by Mr. Sweeney.

Q. Mr. Stanfill, you were one of the Democratic judges, were you, at the election?

A. Yes, sir.

Q. Appointed by the Election Commissioners of your county?

A. Yes, sir.

Q. I understood you to say, if I understood you correctly, that the crowd had about all left town about dark?

A. Well, I said from, I think, about 4 o'clock, until about dark, they got away, few at a time, you know; just dispersed a few along at a time.

Q. By five or six o'clock the crowd had all gone, had it?

A. Well, I didn't say they were all gone, I don't think. I didn't mean to say they were all gone.

Q. I am talking—I am asking you the question now; I say, by five or six o'clock the crowd had all gone—dispersed?

A. I think by six o'clock they were nearly all gone. I think that is about what I said about it.

Q. This is a sample of the ballot that was used in your county, isn't it?

A. I could not say whether it is; I believe that is John Parker's handwriting.

Q. Glancing ordinarily at that, can you see the stencil mark?

A. Yes, sir.

Q. By glancing ordinarily at it?

A. Will you allow me to show how I had delivered the ballot?

Q. Just answer my question—just ordinarily glancing at that, can you see the stencil mark?

A. Yes, sir; I can.

Q. Where is it?

A. That is it.

Q. Holding it between you and the light, you can see it?

A. I didn't hold it up.

Q. Holding it there, the light falls on it, doesn't it?

A. Well, I can see it over here.

Q. Now, you said you wanted to make an explanation of how you saw the ballots; now, you can make any explanation you want to?

A. Our instructions were to fold them like this, and it was day time when we held the election up there in Knox county, and when they were folded that way, before I doubled them I could see how—I think I could see how any man voted, when I looked at it like I said in the first examination.

Q. (By Colonel Breckenridge.) Who folded the ballot; you or the voter?

A. The voter came in with that folded just like that—he came in with that folded that way—I did the other. Usually, sometimes, I would tear them off, and sometimes the other Judge tore them off, that other part of the ballot that his name is on it, and put it away in a box we had for it.

Q. I mean, when he brought it out of the booth, did he bring it out folded or unfolded?

A. Yes, sir; and just like that.

Q. It wasn't folded to go into the box?

A. No, sir; it was folded with one fold, and I would put it on the table and tear off that part of it.

Q. Fold it now like it should be folded to go in the ballot-box?

The witness does so.

Q. Open it out clear open.

The witness does so.

Q. Now, can you take the secondary or subsidiary stub off?

A. I suppose so.

Q. Folded like it was before?

A. Yes, sir.

Q. Just as easy that way?

A. Yes, sir.

Q. But all the voters brought it out folded just one way?

A. No, sir; I didn't say all did.

Q. Most of them?

A. Yes, sir; nearly all of them did, because, if I remember right, they were instructed to do that.

Q. (By Gov. Bradley.) Who instructed him?

A. I could not say.

Q. The officers of the election?

A. I could not say that they did.

Q. Did anybody else instruct them, except the officers of the election?

A. I don't know who did instruct them about it, sir.

Q. Was there anybody in there except the officers to instruct them—in the booth?

A. No, sir; I think we showed them. I think the officers told them to fold them just so that the perforated part could be torn off—fold them just once over; I think that is it.

H. H. Steele, being recalled and examined by Mr. McQuown, deposed as follows:

Q. Mr. Steele, you have been sworn, have you?

A. Yes, sir.

Q. Were you in Barbourville on the Monday next after the election, Mr. Steele?

A. Yes, sir.

Q. Did you see any unusual assemblage of people in that town upon that day?

A. Yes, sir; I did.

Q. To what number or extent, in your judgment?

A. I suppose there must have been a thousand.

Q. Where were they congregated, if at any one place, principally?

A. Different places; they would congregate at different places.

Q. Where did they seem most to congregate?

A. Well, as I remember, the most that I saw in one place was between the Court House and the livery stable.

Q. How near to the Clerk's office was that—the Clerk's office is in the Court House, isn't it?

A. Yes, sir.

Q. Well, did you see any of that crowd armed, or hear any threats?

A. I didn't see any arms; I heard them talking.

Q. Well, what did you hear?

A. I heard some of them say that they had fifty armed men there—fifty drilled, armed men, some person remarked.

Q. Well, what for?

A. They were going to have the polls signed up alright; they had lawyers and would see that it was done that way, was the remarks that I heard, as well as I remember.

Q. Did you hear any threats connected with that statement, against anybody?

A. They also stated that they had four ropes, and those ropes—

Q. And what else did they say?

A. I don't remember distinctly the other words they said.

Q. They said they were going to have the ballots or certificate signed up?

A. Yes, sir.

Q. And they had four ropes?

A. Had fifty armed men—organized, armed men, and four ropes.

Q. (By Col. Breckinridge.) And how many lawyers did they say?

A. They didn't state how many lawyers.

Q. (Mr. McQuown resumes.) What time of the day was that, Mr. Steele, do you recollect?

A. It was just after twelve o'clock, I think, sir; just after twelve o'clock, as I remember.

Q. Well, did you hear any further threats, or talk of that sort, from the crowd that day?

A. I don't remember now that I did.

Q. Where were those people when they were talking that way?

A. There was a little crowd standing on the corner of the walk that is around the Court House.

Q. Where were the Commissioners—Election Commissioners, then?

A. If I remember right, it was just before they came in after dinner.

Q. Before they came in where—to the Court House—into the Court House?

A. Yes, sir.

Cross-examined by Mr. Sweeny.

Q. Who was it that told you, Mr. Steele?

A. I didn't know the gentleman's name—no, sir.

Q. Don't know whether he was a citizen of the county, or not—you didn't know?

A. No, sir, I didn't; he was the man that was with the crowd, but I didn't know his name.

Q. And they had four ropes?

A. He said they had; I didn't see the ropes.

Q. I understood you to say in that same statement, that they had employed lawyers, and intended to have the returns signed up alright?

A. Yes, sir; that was his remarks.

Q. He didn't say that he wanted anything wrong, did he?

A. He didn't say how, only to have them signed up.

Q. He simply said he wanted them signed up alright?

A. He simply said they would have them signed.

Q. What time did that crowd leave town?

A. What time did they?

Q. Yes; about what time in the afternoon did the crowd you speak of leave town?

A. I don't remember that I noticed; it was late in the evening, but about the time of day I don't remember.

Q. By five or six o'clock they were all gone, were they not?

A. I could not say; I don't remember.

Q. You can't give the name of the gentleman who told you about the ropes, and the signing of the certificate?

A. No, sir; I didn't know him.

Q. Who were the ropes for; did he say?

A. He didn't say. He told me the name of the man that had the fifty organized men.

Q. What did they have four ropes for to hang three Commissioners with?

A. He didn't say who they were going to hang.

Q. Did he want two for Mr. Faulkner, on account of his size?

Q. (By a member.) You say that he called the name of the man who had charge of the fifty men?

A. Yes, sir.

Re-direct examination by Mr. McQuown.

Q. Well, who was it Mr. Steele; have you any objection to telling?

A. No, sir; his name, it just slipped my mind a little right then.

Q. Was it a citizen of the county that he referred to?

A. Yes, sir.

Q. How long have you lived in that county, Mr. Steele?

A. I have lived in the county since the fall of 1857.

Q. These men that were talking about the drilled men, and the ropes, and about having the certificates signed up right, were they strangers to you?

A. Yes, sir; I didn't know them.

Q. You didn't know them at all?

A. No, sir, I didn't know them. I remember that name now, it was Mr. Tip Jones.

Q. Now, what was it that they said about Mr. Tip Jones?

A. That he had fifty organized men there, with their guns.

Q. Where did Mr. Jones live?

A. He lives up, I believe, a creek called Richland, from town apiece.

Q. How far from Barbourville?

A. I don't know exactly where he lives; probably five or six miles.

Q. Which one of the political parties does he belong to and affiliate with?

A. Well, I can not tell you positively; I don't know that I ever heard him say.

Thereupon the Board adjourned until Thursday, January 18, 1900, to 2 o'clock P. M.

FRANKFORT, KY., January 18, 1900.

Met pursuant to adjournment in the afternoon at 2 o'clock in the Chamber of the House of Representatives, by agreement.

John H. Page, was called to the stand, and cross-examined by Mr. Sweeny as follows:

Q. I believe you stated that these notices were all printed?

A. Yes, sir.

Q. Wouldn't it have been absolutely impossible for you, with the force in your office to have written those notices out?

A. Yes, sir; I think it would.

Q. I will ask you to read the petition, if you have it with you, in the case of Marshall against Bozarth to the Committee upon which the orders for the injunctions were founded, based?

A. What injunctions?

Q. I want the petition read.

A. There were some injunctions issued in that case; do you mean—

Q. I mean the injunction in the case of Marshall against Bozarth?

A. Bogarth it is.

(The petition was read as follows:)

(This petition is missing.)

Q. That is a certified copy of the petition that was filed in your court?

A. No, sir; it is the original petition.

Q. Will you please file it and make it part of your testimony?

A. No, sir; I can not file that. I will file a certified copy of it.

Marvin H. Lewis, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Give your name and residence, please?

A. Marvin H. Lewis; residence, Louisville.

Q. What is your present occupation?

A. Reporter on the Louisville Times.

Q. What was your occupation on the 7th of November, election day?

A. Reporter of the Louisville Times.

Q. Were you in the city of Louisville on the election day last past?

A. I was.

Q. Did you see any member of the Military take any part in the conduct of any election at any precinct, and if so, tell us what you saw without any questions from me?

A. I did not.

Q. Do you know Lieutenant James—Bill James?

A. I do.

Q. What was his official connection, if you know, with the Military in Louisville?

A. I don't know certainly that he had any official connection with the Legion. He was a member of the Old Legion when it went to Puerto Rica, but I don't know whether he was a member, but he told me—

Objected to.

Q. Did you see him on election day?

A. Yes, sir.

Q. Where?

A. I saw him at Republican Headquarters, and saw him on the street, on Fifth street.

Q. How was he attired, if you know?

A. He was in military uniform, and had a sabre, wearing a sabre.

Q. What is his name?

A. Will James, I don't know what his middle name is, whether he has one, or not.

Q. Where did you see him during the progress of the election and what did you see him do?

A. Well, I didn't see him during the progress of the election. I saw him as I say on Fifth street and at Republican Headquarters on that day.

Q. What was he doing?

A. He came up to Republican Headquarters, he is a Republican; he came up there to consult with the Republicans, and he got to talking to me up there. I am not a Republican, but I am a friend of his. He was talking to me.

Q. Did you see any occurrence with reference to the ballot books?

A. No, I didn't see any occurrence of that sort?

Q. I mean at the voting precinct at Sixth and York?

A. Well, I went to the voting precinct at Sixth and York on my way down town that morning to vote, and I could not vote. I asked the officers of the election why I could not vote. They said the ballot box was not there, that somebody had taken it away. They didn't tell me who had taken it away.

Q. Mr. James that you saw around the Republican Headquarters that day, was he attired in his military uniform with a sword?

A. He was.

Q. Were you in Louisville prior to the election?

A. Yes, sir.

Q. Continuously?

A. All except a short time I was in New York this summer on vacation.

Q. Was there any thing in Louisville just prior to the election or on election day that made it necessary to call out the militia?

Objected to, objection overruled.

Q. What was the condition of affairs in Louisville as to whether there were any signs of trouble or disturbance?

A. There were no signs of trouble. The only signs of trouble were in the anti-Goebel newspapers.

Q. Was there on election day anything occurred in Louisville that demanded the use of the militia?

A. In my opinion there was not.

Q. Did you see Gov. Bradley on election day?

A. I did.

Q. For what purpose did you see him?

A. I went to the Galt House, I think it was about two o'clock, probably between two and three that afternoon, to interview him to find out whether he was going to call out the militia.

Q. Between two and three o'clock on election day?

A. I think so, about that time.

Q. What did he say about it?

A. Well, he was standing by the telegraph office there, in the lobby of the Galt House, and I approached him, and asked him, and told him I wanted to talk to him, and he said "My dear sir I am very busy, I haven't got time to talk to you" and then I insisted and told him what I wanted, wanted to find out whether he was going to call out the militia, that there were rumors to that effect. He said, "No, My Dear Sir, those rumors are untrue, I am not going to call out the militia," that is what he said in substance.

Q. What time of the day was that?

A. It was between two and three o'clock.

Q. How long was that before the militia was actually called out?

A. I don't know.

Q. You don't know the hour?

A. No, sir.

Q. You said you were unable to vote?

A. I said I was unable to vote that morning. I did vote that afternoon, just shortly before the polls closed.

Q. Did Mr. James, the Lieutenant you have spoken of, explain to you why you couldn't vote?

A. Yes, sir; he was laughing and talking with me, we are neighbors out there, live pretty close together—and he said that—

Objected to, objection overruled.

A. I said that he told me that he was acting with the Legion that day.

Q. I asked you what explanation this Lieutenant gave you as to why you couldn't vote?

A. Well, he said he and his brother John took the ballot book out to their house on Fifth Street and kept it there under guard until after nine o'clock that day.

Q. Did that on election day?

A. That was on election day.

Q. There has been introduced on yesterday before the Board a copy of a paper containing the charge of Judge Evans; did you hear the charge?

A. I got into the court-room just at the conclusion of the charge.

Q. You didn't hear it all?

A. No, sir; I wrote something about it, but I didn't hear it all.

Cross-examined by Mr. Sweeny.

Q. Where does Mr. James live, what is his address?

A. I can't give it to you. He lives on Fifth street, between Breckinridge and Kentucky.

Q. What are his initials?

A. Will; I don't know what his middle name is.

Q. You don't know, as I understand from your testimony, as to whether or not he belongs to the Louisville Regiment, now or not, the State Guards?

A. Only that he told me that he was acting with them that day.

Q. Don't you know it to be a fact that a great many soldiers in Louisville who belonged to the Old Legion, the old Louisville Legion, when they came back from the Spanish war and were mustered out, are continuing to wear their uniforms, who are not members of the present Louisville Regiment?

A. I saw some of them just after the war, but I don't think they are wearing them around there at this late day.

Q. Did you see any men on election day wearing uniforms who were not members of the Louisville Regiment at the present time or were not members on the day of the election?

A. I will say I don't know, I don't whether I do or not.

Q. You can't tell about that?

A. I don't know whether he was a member or not; only what he said to me; that he was acting with the Legion.

Q. You did vote in the afternoon?

A. Just about five minutes before the polls closed.

Q. You say that you went to Gov. Bradley about two or three o'clock in the afternoon on the day of the election as Representative of the Louisville Times to ascertain whether or not he intended to call out the Military?

A. I did.

Q. Just previous to that time your paper nor you had no knowledge as to whether or not the Military were to be called out?

A. We had been trying to find out all day; we had sent several people to see Gov. Bradley.

Q. And he told you he didn't intend to call them out.

A. That he did not.

Re-direct examination by Mr. Phelps.

Q. You said when you went to see the Governor that day at half past two he said he was very busy?

A. Yes sir.

Q. What was he busy about?

A. Well, I don't know; he seemed to be sending telegrams.

Q. He was there in Louisville?

A. Yes, sir; he was there at the telegraph office in the lobby of the Galt House.

Q. Was Mr. James that you have spoken of that day in uniform—I believe you said he had his sword buckled on?

A. Yes, sir, sabre, looks like.

Q. Do you know how long Governor Bradley had been in Louisville at that time?

A. Not of my own personal knowledge, no. I know what the newspapers said about it—I know what the men in our office said about it.

Re-cross-examination by Mr. Sweeny.

Q. You said something about what Governor Bradley said to you. Will you please state to the Committees the exact question you asked Governor Bradley, and the exact words of his reply?

A. That is pretty hard to do. I can state it substantially. I asked him after he said he was very busy, I asked him about these rumors that he was going to call out the militia, asked him point-blank if he was going to call out the militia, and he said: "My dear sir, no—no, there is no truth in those reports," and shook his hand that way as though he was very annoyed. I knew the Governor pretty well, he is a pretty good fellow, and I didn't hesitate to approach him.

By Mr. Phelps. Where was the mlitary at that time? Do you know?

A. I don't know certainly where they were. I know where the armory was. I suppose they were there.

Q. (Mr. Sweeny resumes.) You said something about the anti-Goebel newspapers in the city of Louisville having some articles in regard to the election. Will you please state to the Committee the names of the anti-Goebel newspapers in the city of Louisville?

A. I can state the ones that I consider anti-Goebel newspapers. The Dispatch, the Post, the Commercial and the Free Press, I don't know whether that ought to be called a newspaper or not.

Q. Any others?

A. That is all that I know of.

Q. Do you know anything about the attitude of the Baptist Recorder in this late political contest?

A. I never read religious newspapers.

Q. Do you know anything about the attitude of the Christian Observer?

A. No, sir.

Q. Do you know anything about the attitude of the Catholic Advocate?

A. No, sir.

Q. The Anzeiger, do you know anything about its attitude?

A. No, sir; I don't know anything about it, except that I think it is a Democratic newspaper.

Q. I will ask you this question, if every paper in the city of Louisville except the Times, the Evening Times and the Courier-Journal, were not anti-Goebel newspapers, including both the religious and the lay press?

A. Not to my knowledge.

Q. The daily papers?

A. I think that the Anzeiger was a Goebel newspaper, I think that the News was an independent paper, I don't think that it pretended to take any sides in that fight one side or the other.

Q. I will ask you this additional question. Can you state or will you to the Committee any legal, qualified voters in the city of Louisville that were not connected with the city administration. Will you please state if you know about any legal qualified voters in the city of Louisville that were not connected with the city administration or the Courier-Journal or the Louisville Times, the police force or the Fire Department, that were for Mr. Goebel?

A. Yes, sir, I know of a good many.

Q. I would like to hear of some of them?

A. All of my family were, and they are not connected with any newspaper.

Q. You are, though?

A. I know it. I didn't say I was for Mr. Goebel. I don't object to say I was.

Q. I am requested to ask you by Governor Bradley if you did not know at the time you propounded the question to him that you did propound in regard to the military that the soldiers were then in the armory?

A. No, I did not. I had instructions to go and see Governor Bradley and ask him about it. I had no personel knowledge that the soldiers were in or out of the armory, because I didn't go to the armory all day.

Major David W. Gray, a witness, being examined by Mr. Phelps, testified as follows:

Q. Where do you live?

A. Louisville.

Q. Do you object to giving us your party affiliation?

A. I have been a Democrat all my life until the Chicago platform was adopted, then I registered as a Democrat because I didn't like to register as a Republican; the last time I registered and voted the Republican ticket.

Q. Were you connected in any way with the military in Louisville?

A. I am a Lieutenant Colonel of it?

Q. When were you appointed as Lieutenant Colonel?

A. I was elected 2nd August.

Q. This past year?

A. Last year.

Q. August 2, 1899?

A. Yes, sir.

Q. When was the present Legion in Louisville or militia organized?

A. In July.

Q. Where was the armory or quarters at the time of the organization?

A. They had none.

Q. When did they obtain any quarters?

A. They started to obtain quarters as soon as the election of the Colonel and myself on the second of August, and were unable to obtain any suitable quarters until the middle of October.

Q. Is that approximately the fifteenth of October?

A. Later, I think, than that, nearer the twentieth.

Q. And the election took place on the seventh of November?

A. Seventh of November.

Q. And no quarters were obtained until the seventh of November?

A. No suitable quarters were found until that date—not the seventh of November—you said that suitable quarters were not obtained until the seventh of November.

Q. No, about the twentieth of October, I understood you to say?

A. You said the seventh of November.

Q. I understood you. By whom were those quarters obtained?

A. I believe Colonel Mengel told me it was through the real estate agent John H. Brand & Company; they were hunting for quarters for us.

Q. Who instigated their hunt—who got them to hunt for them?

A. The Colonel.

Q. Colonel Mengel?

A. Yes, sir.

Q. Col. C. C. Mengel?

A. Yes, sir.

Q. Do you know what his politics were?

A. Everybody knows he is a Republican?

Q. I didn't know whether these gentlemen knew it. Whereabouts were the quarters obtained?

A. On Main street, 637 West Main Street.

Q. Was any application made to the authorities of the City of Louisville to provide means, the money for paying for those quarters?

A. We had applied to the authorities of the City of Louisville for an armory.

Q. That was pending, was it not?

A. We couldn't get any satisfaction.

Q. Did you apply to them for the money to pay for the quarters you did obtain on the 20th of October?

A. We have not yet.

Q. Where did you get the money with which to pay for those quarters that you rented about fifteen or seventeen days before the election?

A. We got those from the fund secured from our honorable members.

Q. How much fund did you have?

A. About five hundred dollars.

Q. Could you give us the names of whom those parties were that put up that $500?

A. The members who have been elected as honorary members of our regiment to this date.

Q. I mean the names of those—of that number who gave the money—I am only interested in those that gave the money?

A. I don't know who gave that money. Because the money was turned over to me in a lump from the company.

Q. How many drills of the militia did you have prior to election day?

A. We had, the whole week before, we had spent in issuing our uniforms—

Q. The weeks before the election?

A. Yes, sir, we had had no drill whatever, except what we might have—just a little exercise.

Q. I mean how many evening exercises did you have before the election day?

A. We had one week, we had an armory one week before the election.

Q. I believe you told the gentlemen of the Commission here that an organization was made in July?

A. In July.

Q. And nothing was done with the organization until about a week before the election?

A. Because we had no armory.

Q. How many meetings did you have then during that week before the election?

A. How many meetings do you mean of the companies?

Q. Yes?

A. We had two companies meet every night in order to receive their uniforms.

Q. Did they not have any other purpose?

A. No, sir.

Q. Were they under any instructions?

A. What for?

Q. I don't know, I am asking you whether there were any instructions?

A. They were assigned their lockers and their uniforms.

Q. Were they drilled at any time?

A. I think not.

Q. When the headquarters for the soldiers, the armory were obtained, was it equipped in any way?

A. It was just a plain vacant building.

Q. What was done in the direction of equipping that building?

A. We had our lockers that were made for us ready to put in the building brought in.

Q. Where were they made, and when?

A. They were made by the C. C. Mengel Company.

Q. This Col. Mengel—he had those made?

A. Yes, sir.

Q. Do you know who paid for them?

A. I do not. They were to be paid for out of the regimental funds just as these others were.

Q. How many were in this organization that was organized in July but had no meeting until a week before the election—how many was in the organization?

A. I suppose between 250 and 300 men.

Q. Was any ammunition provided for them or any arms of any kind provided for them?

A. Ammunition and arms were provided.

Q. When?

A. From the 26th of October.

Q. 26th of October?

A. Soon after the 26th of October.

Q. What did you get on the 26th of October?

A. On the 26th of October, having secured the armory, in the name of the Colonel I wrote to Frankfort that the regiment was ready for its occupancy, and to please send us equipment for five hundred men.

Q. You had about 260 members?

A. We had about between 250 and 300 men, and I asked for equipment for five hundred men.

Q. Whom did you write to on that subject?

A. To the Adjutant General.

Q. That is Col. Collier?

A. Yes, sir.

Q. He is a Republican, is he not?

A. Of course, he is; State officer; and I applied at the same time for ten thousand rounds of ball cartridges, and for five thousand rounds of blank; they sent me eight of the one and two of the other.

Q. When did you send this letter, if you can recollect?

A. On the 26th of October.

Q. When did you get the guns and bayonets, after you got in the armory?

A. We got those altogether on the following Monday, I think, about the 29th of October.

Q. That was Monday, just preceding the election day?

A. Two Mondays preceding the election day.

Q. The election day was on the 7th of November, and if this was on the 27th of October——

A. It would be the Monday following the 26th of October, whatever date that was.

Q. It was the Monday one week prior to the election, or eight days, rather?

A. Yes, sir.

Q. What did you get from Frankfort at that time?

A. We got, I told you the ammunition—got 8,000 rounds of ball, 2,000 rounds of blank, equipments for—full equipments for about 350 men.

Q. What do you mean by full equipments, I don't understand anything about that?

A. Uniforms and side arm and guns.

Q. Bayonets?

A. That is part of the side arms, and we got probably 400 uniforms but we didn't get enough equipment for 400 men.

Q. But you got guns and bayonets and ammunition for more then 300 men?

A. Yes, sir.

Q. Could you tell the gentlemen of the Commission about when they arrived?

A. They arrived on a Monday, two Mondays before the election, I don't know, the 29th, what date it was.

Q. The Monday just previous to the election?

A. Just preceding the election.

Q. Was the arrival of these guns and this ammunition and provisions of every kind, announced to the public through the press?

A. Not by us.

Q. I don't know who by—did you see it announced?

A. It said that we had gotten our armory and gotten our equipment.

Q. Did it say that the ammunition and the guns and bayonets had arrived?

A. I don't know if it said anything about the ammunition. Simply said that we got our armory and equipment.

Q. Don't you remember that the number of rounds of ammunition and all was published?

A. I do not, no.

Q. How many thousand?

A. I think not.

Q. What else did you get in the way of equipment?

A. That is all.

Q. Didn't you get any large guns, Gatling guns?

A. Not then, we did not.

Q. When did you get those?

A. We got those on the Monday before the election.

Q. That is the day before?

A. The day before.

Q. What time did they arrive on the day before the election?

A. I think they arrived there before noon; they were in the armory by noon.

Q. What did you receive in that direction—what guns?

A. We received two Gatling guns.

Q. Could you give us an idea of the size or the denomination, whatever it may be?

A. The Gatling gun has an uniform size.

Q. Did you get any ammunition for that?

A. We got some; not very much.

Q. Could you give us an idea what you mean, not very much?

A. I don't think—I didn't see how much we got, but we got what we received from Pewee Valley, and I don't think it was more than about perhaps a thousand rounds.

Q. That means enough to fire a thousand rounds, thousand times?

A. Enough to fire a thousand shots; one of those guns was disabled.

Q. Was the arrival of the Gatling gun and the small round of ammunition that came, the thousand rounds, was that announced to the public?

A. I think not.

Q. Was it not published in the afternoon papers, the day it came?

A. There was something in a paper from Lexington that we got that, but I don't believe it was announced that we got it in Louisville.

Q. Where did you put the Gatling guns when you got them?

A. In the armory.

Q. What part of the armory were they placed in?

A. One in the cellar and one in the first floor.

Q. What part of the first floor was it put in?

A. In the center of the first floor.

Q. Was the front of the building glass doors?

A. Yes, sir.

Q. People passing along the street and looking in could see the Gatling gun pointed right to the front door?

A. Not unless they stopped and looked in, they wouldn't notice it.

Q. If they did stop and look in, there was no trouble about it?

A. They could see it.

Q. Will you tell us about the size of a Gatling gun, how big it is?

A. A Gatling gun stands up about that high from the ground. (Indicating.)

Q. Four or five feet?

A. Four or five feet from the ground. It is about five feet long, brass, looks like a small—

Q. Shoots a single ball?

A. Shoots a single ball at a time.

Q. What size ball does it shoot?

A. 45 caliber.

Q. And how many times does it shoot a minute?

A. It depends on how you grind them out, and it can shoot 250 times before you reload.

Q. Will you give us an idea with a man of ordinary experience how rapidly you can shoot a Gatling gun—about how many shots in sixty seconds?

A. You could grind out your whole 250 in 60—no, I don't think you could do that, grind out your 250 shots—yes, I expect you could in sixty seconds. But you couldn't get the hopper on in that length of time.

Q. The Gatling guns arrived about noon the Monday before the election; that would be November 6th?

A. Yes, sir.

Q. At what time was the order issued calling the militia to the armory?

A. The order from the Governor was given about 3 o'clock on Monday afternoon; our order was given then—that is the second order—the first order to assemble a detail in the armory was given on Sunday afternoon; the detail was assembled there then, and then on Monday afternoon the Governor gave us an order to assemble our troops and hold ourselves in readiness at the armory at 6 o'clock on the morning of November 7th.

Q. I understand you to say then that about noon on Monday before the election, that is the 6th—

A. At 2 o'clock.

Q. At noon the Gatling guns came, and at 3 o'clock of the same day the Governor ordered—he called the militia to be at the armory the next morning at 6 o'clock?

A. Yes, sir.

Q. That would be on election day at 6 o'clock?

A. Yes, sir.

Q. At what time did the polls open on election day?

A. I think at 7.

Q. The order issued by Governor Bradley to you was to call the militia out the morning of the election one hour before the polls opened?

A. Yes, sir.

Q. Was that done; was that call made; was the militia called to the armory on the morning of the election an hour before the polls opened?

A. Men assembled at the armory at that hour.

Q. How did they happen to assemble?

A. They were ordered out.

Q. Could you give the gentlemen of the Commission an idea as to how many reported?

A. We had altogether 276.

Q. Were they in uniform?

A. Not when they came to the armory.

Q. When they got there they were put in uniform?

A. Yes, sir.

Q. How long were they kept there?

A. All day long until they were finally dismissed about half-past eleven that night.

Q. Kept in the armory all that time?

A. Except when they were at their dinner; except when they went out on the detail service at half-past six.

Q. Was that during the progress of the count?

A. I don't know anything about the count.

Q. How many were called out at half-past six?

A. About ninety.

Q. Were they taken out under order in uniform?

A. Yes, sir; under orders.

Q. In one company or detailed into special squads?

A. In one company.

Q. Who had charge of them?

A. Col. Mengel.

Q. Where did Col. Mengel take these ninety that he took out at half past six?

A. Along Eighth; along Walnut to Nineteenth; Nineteenth to Magazine; Magazine to 26th and back to 22nd and from Jefferson up to—up Jefferson to Ninth and Ninth to the armory.

Q. Can you give the gentlemen an idea of how much territory that covered in miles?

A. That would be between four and five miles.

Q. That a populated part of the city where people live and doing business?

A. Yes, sir.

Q. What was the object in taking that route; did you go to particular places?

A. Yes, sir.

Q. What places were sought out?

A. We went to the voting place where there had been an election on Eighth street, and on Tenth street and various others.

Q. About how many precincts did your soldiers visit that day —voting places?

A. I believe we found some of the places closed. They had made the count and the people had gone away. First of all the troops did not go within fifty feet of any voting place. Col. Mengel went to two places where the count was still on. At the other places the houses were closed.

Q. Did Col. Mengel go up to the voting places himself?

A. Yes, sir.

Q. In uniform?

A. Yes, sir.

Q. What were you ordered out to do?

A. To support the order of Judge Toney.

Q. The purpose was to see that what was called the Brown Inspectors were forced into the precincts?

A. I have not read the order.

Q. But you know, Major?

A. I know the general impression was that there were some Inspectors that were entitled to admission and they had been denied admission by the officers.

Q. You were ordered to see that that order was enforced?

A. That was what we were there for.

Q. The fact that the militia was summoned to be at the armory on election day at six o'clock was announced in the papers?

A. No, sir; I am not certain. Not that I knew of.

Q. You say it was not published in the papers that the Legion was summoned there at six o'clock?

A. I think not.

Q. Don't you know that all of those 260 men were out on the streets at different times?

A. No, they were not; only when they went to dinner a half a square away.

Q. Didn't they go on the streets then?

A. Yes, sir; a square off.

Q. Don't you know that people passing in and out of the city knew that the militia knew that the militia was out?

A. Only very few.

Q. What has become of that armory now?

A. It is there now.

Q. Is there not a sign on it for rent?

A. It has been for rent ever since we got it.

Q. Ever since what?

A. Ever since it was vacant. We rent that armory at a very low rent per month. We have a monthly tendency, which is terminable upon a month's notice if they can get a person who will give them the ordinary rent and we will have to get another place, other quarters.

Q. How many meetings of the Legion have you had since the election day?

A. Drill every night.

Q. Every night since election day?

A. Until the holidays and we suspended them for two weeks and have resumed.

Q. Have you still got everything in the armory that you had there?

A. Everything, yes.

Q. Your Gatling gun and ammunition?

A. Yes, sir.

Q. When was the sign put up on that building "For Rent"?

A. I don't know.

Q. Been put up since the election, has it not?

A. Yes, sir; because we pulled down everything that was in the armory when we took charge of it.

Q. The sign was put up since the election?

A. Yes, sir.

Q. It was not there at the time of the election—this sign "For Rent"?

A. No, sir.

Q. Do you know Mr. Will James?

A. I know him very well.

Q. Has he any connection with the present Legion?

A. None whatever.

Q. Was he in service on election day?

A. He was not.

Q. Is anybody allowed that wants to to wear a uniform and sabre?

A. You can't prevent a man from wearing his own property?

Q. Is that allowed?

A. Yes, sir, I saw a man on the streets that didn't belong to us that day.

Q. Did you see any with sabres that didn't belong to you?

A. Yes, sir.

Q. Did you see him on election day?

A. Yes, sir.

Q. Where did you see that man?

A. He came around close to the Armory but he had a sabre on.

Q. What was he doing at the Armory?

A. He came to see us; what we were doing.

Q. To see whom?

A. See me.

Q. He had no connection with the Armory?

A. None whatever.

Q. What right did he have to come in and see you all?

A. Just as anybody has a right to come and see what we are doing.

Q. Did he come in there dressed in uniform?

A. He had his military overcoat on. More than that I don't know. I didn't notice whether he had the full uniform on or not. I am sure he had a sabre on.

Q. I believe you said you were called out on the afternoon of the election day to enforce Judge Toney's order.

A. We were called out at half past six.

Q. To enforce that order?

A. Yes, sir.

Q. You also said that you were called at six o'clock in the morning; ordered to call all of your men in?

A. Yes, sir.

Q. Judge Toney's order had not been issued at that time?

A. Oh, no.

Q. It was not issued until about 11.30 that day?

A. That had nothing to do with the first call.

Q. When was the first time that you heard of the purpose to call out the troops on election day?

A. It has been the custom to have a detail at the armory on election day and I suggested to Col. Mengel that we should ask for an order that we could have a detail of the regiment there to protect our property and our ammunition.

Q. I did not ask you anything about a detail; I asked you about calling out the entire Legion?

A. On Sunday we got an order from the Governor to put a detail on there that night which we did. On Monday at about half past twelve Col. Mengel came around to me and asked me to go see the Governor and I did. The Governor then said that he had been informed—had information and so forth, that there was a very excited state of affairs in the city of Louisville on Monday about noon; and in all probability there might be rioting and that sort of thing on election day; and asked me if that was the case what arrangements we had for quietly summoning the militia. I said that the only arrangement we had was by sounding the fire alarm; that we had a signal for calling the militia, but that that caused more excitement; and I suggested that if there was any danger of trouble we had better have the regiment in the armory waiting for service if the occasion arose; and on that the Governor gave us an order to call out the men, which we did.

Q. The first time you heard of the purpose to call out the entire militia was the day before the election?

A. Yes, sir.

Q. And the entire militia was on Monday ordered to report to the armory?

A. Yes, sir.

Q. On Sunday a detail was spoken of?

A. Yes, sir.

Q. How long had Governor Bradley been in the city of Louisville, do you know?

A. I don't know.

Q. He was there on Sunday?

A. Yes, sir.

Q. Do you know he was there on Saturday?

A. I do not know.

Q. Don't you know that he was to speak at the Auditorium on Saturday night, and that Mr. Willson spoke in his place?

A. That was Monday.

Q. He was there Sunday and Monday?

A. Yes, sir.

Q. And on the day of the election?

A. Yes, sir; I saw him on all three of those days.

Q. Were you at the speaking of Mr. Denny on Saturday night previous to the election?

A. I was not.

By a member. Major, I understood you to say that you saw other men in the city that did not belong to the Legion in uniform?

A. Yes, sir.

Q. About how many?

A. One that I speak of was an officer. As I was going in from voting, after I had voted on the Sixth Street car I saw an officer come out of Seelbach's hotel on the corner of Sixth and Main. I called two of our own officers and asked them if they would follow this man up and see if they could find out who he was, but they could not find him. That is the only officer. I saw more men; more than a dozen men in old soldier's clothes? You see the men who came out of the Spanish War—out of the different regiments—wear their old clothes until they wear them out and you see them sometimes; fellows in soldier's clothes.

Q. (Mr. Phelps resumes). Who was this officer?

A. I don't know. There were six gentlemen who came out of Seelbach's together in two and two and you were one of them and this officer was the last one of them. I told two of our officers to find out who it was, but they could not find him.

Cross-examined by Mr. Bradley.

Q. Was this man an officer of your regiment?

A. No, sir.

Q. Were those men that you saw in uniform members of your regiment?

A. They were not.

Q. There had been a regiment that had passed through?

A. No. There was a regiment just from the Philippines that had been mustered out in San Francisco and the men were returning to their various homes.

Q. I will get you to state whether you are a member of the old Louisville Legion?

A. I have been a member of the Louisville Legion since 1879.

Q. How many Gatling guns did that Regiment have when you went into the Spanish war?

A. One.

Q. I will get you to state whether you did not have three?

A. I can not state but two.

Q. Did not you have Battery A?

A. Yes, sir.

Q. How many guns did you have?

A. Three.

Q. One was sent to Lexington?

A. Yes, sir.

Q. And two in your Armory; when you went into the Spanish War two Gatling guns in your legion, was there not?

A. I don't remember how many; whether one or two.

Q. There was one at any rate?

A. I know there was one.

Q. Did you have any ammunition at that time in your Armory in the old legion?

A. Yes, sir; we always had it.

Q. What was the habit of the Old Legion with regard to taking care of the Armory at any time of excitement?

A. Whenever there was any undue excitements on the streets there was a detail at the Armory to protect the property.

Q. Had any soldiers been put in that Armory before this on election day?

A. Yes, sir.

Q. When?

A. The last one.

Q. What day: on what election day?

A. The election of 1897.

Q. Under whose command were those soldiers in 1897?

A. I don't remember what officer had command of the detail.

Q. Do you remember who was colonel of the regiment at that time?

A. General Castleman.

Q. How many men there on election day in 1897?

A. I don't know how many men because I was not on the detail. All I could see was just by going past the armory. I should judge just roughly perhaps an average detail of from thirty to fifty.

Q. What was the politics of Colonel Castleman?

A. The Colonel was a Democrat.

Q. That was the Mayor's election, was it not?

A. Yes, sir.

Q. In 1897?

A. Yes, sir.

Q. Any excitement prevailing then in the city?

A. It was a pretty excited election; I could not say there was very much excitement before the election.

Q. Now, Colonel, as to this armory; how long had you been trying to get an armory?

A. Ever since the second of August, and we had been put off by the Mayor with promises of one way or the other of what he was going to do for us; and wanted us to wait until he could get us an armory; and the men were getting restless and we were trying to get some quarters for our men.

Q. How long had you been a member of the Louisville Legion up to the time of the breaking out of the Spanish War?

A. Since 1878.

Q. You had an armory at that time?

A. Yes, sir.

Q. What became of that armory when you left it?

A. The armory is still there.

Q. Could you get it when you undertook to organize the Legion when you came back?

A. The city declined to make an appropriation for our rent.

Q. Were any obstructions thrown in the way of the organization of the Legion?

A. Yes, sir.

Q. What was the character of your obstruction of your organization?

A. The County Judge refused to certify that these men were fit men to become members of the militia organization.

Q. Did he admit that they were men of fit character and declined to certify to it?

Objected to.

A. He objected and said they were all right, but it was not time to organize the regiment.

Q. Now when was it that he said this?

A. When the committee were endeavoring to get him to give his consent.

Q. How long was that before the organization was completed?

A. That was in June and July.

Q. You say there was a detail placed in the armory?

A. Yes, sir.

Q. I will ask you to state whether or not this is the order that was given at that time? I will read it: "Executive Department, November 5th, 1899. Col. C. C. Mengel, First Ky. Rgt., S. G. You will detail and place in the armory such number of men as

you think necessary to protect the property of the State and to prevent any person evilly disposed from taking or using the guns or ammunition in the prosecution of any breach of the peace. Wm. O. Bradley, Governor of Kentucky." Was that the order?

A. That was the order we obtained to put our first detail in there.

Q. Now sir, I will ask you whether this was the order that was given on Monday, November 6th: "State of Kentucky, Executive Department, November 6th, 1899. Col. Charles C. Mengel, Lieut. Col. David W. Gray, First Ky. Regiment. You are hereby ordered to assemble your regiment at their armory in the city of Louisville and have them ready by 6 o'clock to-morrow morning to act under my order as the Chief Officer and Magistrate of this Commonwealth for the suppression of riots, or breaches of the peace and protection of the lives and property of the citizens in the city of Louisville during the day or the following night and to remain on active duty until relieved by me. Given under my hand as Governor of the Commonwealth of Kentucky, day and date above written. Wm. O. Bradley."

A. That is the order.

Q. I will get you to state whether there was another order defining the duties, as to what should be done?

A. That was given to Col. Mengel.

Q. I mean given to the regiment?

A. Yes, sir.

Q. Have you that order with you?

A. No, sir; that was our instructions. We did not look upon that—

Q. Have you that order of instructions with you?

A. No, sir; I have not.

Q. I will get you to see whether or not this is the order: "You will assemble the companies of the 1st regiment at Louisville—

Objected to the reading of these instructions to the witness.

A. I can state the substance of that order. I saw the order myself.

The objection was withdrawn.

Q. State the substance of it then?

A. The substance of the order was that in case of riot we were to exhaust every means in our power to get between the mob and any people that they were attacking: and that we were to use our blunt weapons first before any attack should be made on the body of rioters; and we were to use our rifles only as a last resort. I think that it was copied out of the Statute.

Q. Yes, sir, it was an exact copy.

A. When I read it through it struck me as just what any military man had a right to do in case of riot and these instructions were kept. Col. Mengel kept them.

Q. I will ask you whether there was anything of that sort in it; that you were to keep them in readiness to-morrow night to maintain the public peace and protect the lives and property of the citizens of Louisville?

A. That was in the order which we read, sir.

Q. I will read the other order: "You will exercise great caution and do nothing that the exigencies of the occasion do not absolutely require. You will not act on the defensive and only permit the troops to use their large and pointed weapons to repel violence except in the following cases: by which his life is endangered they may defend themselves by discharging their fire-arms; and when the attack is general the commanding officer may order the troops to fire. If the troops can not be placed between the rioters and the persons or property they are intending to attack, and the illegal purpose of the riot be persisted in by means dangerous to lives or property of others you may order the troops to disperse the rioters by first using and bayonets; and if they prove ineffectual, but not otherwise, to discharge their fire-arms against them. Before using any force you will command the rioters in the name of the Commonwealth of Kentucky to disperse." Is that the substance or not of that order?

A. That is almost word for word the order. The part in the first part about dispersing the troops, that was done in the other order which you read. The other is identically the same as what you read.

Q. Now I will ask you whether or not a verbal order was given that none of these troops should go near the polls with their uniform on and if they wanted to vote they must go in citizen's clothes—was that given to you and to Col. Mengel?

A. Yes, sir, the Governor gave that order and it was followed out.

Q. Did any one of your men on that day go in his uniform to any polling place while the voting was going on?

A. Not to my knowledge

Q. Now I will ask you with the exception of the orders that I have named here whether you had any other orders? Were or not these all the orders up to the time of the Toney matter?

A. That is all, sir.

Q. Now, I will ask you what time you left the armory? I believe you say you received an order at six-thirty; I will ask you if it was not after seven o'clock before your men moved out of the armory?

A. It was about seven, sir.

Q. I will ask you whether this is the order that you received then: "Col. C. C. Mengel or Lieut.-Col. David W. Gray. November 7th, 1899. Sterling B. Toney, Judge of the Jefferson Circuit Court, has made communication to me that his order to admit inspectors to the booths to witness the count has been

ignored; and that he is unable to enforce the same. You will proceed at once with your regiment, exercising your best judgment, to enforce the order, leaving sufficient men at each polling place to protect the officers during the count; and you will give due notice of your purpose at each of the polls before proceeding to act; and dividing your forces as you see fit?"

A. Yes, sir; that is the order.

Q. Did you or not receive in connection with that order a list describing the polling places to which you would go?

A. There was a list sent with that order of, I think, twenty-one or more polling places.

Q. Now I will ask you whether there was any polling place approached nearer than within fifty feet except two, or did Col. Mengel or the soldiers put any man out of any polling place or put any man in any polling place in the city of Louisville?

A. They did not.

Q. In one or two instances did he go to the polling place?

A. In only two instances were we at any polling place while it was in operation.

Q. All the others had been closed and the election was over and the count was made?

A. Yes, sir, and the inhabitants returned to their houses.

Q. The polls closed at four o'clock?

A. I believe so.

Q. I believe you stated you took ninety men on that occasion?

A. Yes, sir.

Q. Did you have any orders to interfere in any election or to prevent the officers of any election from holding an election, or to have any part in it whatever?

A. Those are all the orders we had of any kind whatever.

Q. Now, Colonel, what business are you engaged in in Louisville?

A. Assistant cashier of the Bank of Kentucky.

Q. Is that the place you held before you went into the Spanish army?

A. Yes, sir; I have held that position for ten years.

Q. At the time you enlisted in the Spanish war what position did you hold in the old Legion?

A. Major of the First Batallion.

Q. You were promoted while in the Spanish war?

A. Promoted to Lieutenant-Colonel of the regiment.

Q. I believe you said something about these soldiers going to some place to get something to eat?

A. Yes, sir.

Q. How far did they go?

A. Some of them went to a place in the same block, just around the corner to the Normandy Hotel and the others went to Rufer's Hotel. They were the closest places.

Q. Why was it you didn't take them to the Louisville Hotel and Seelbach's?

A. The Louisville Hotel would have been a very expensive place and I don't think Seelbach's would have had accommodations for them.

Q. When these men went out did they take their guns with them?

A. No, sir.

Q. In whose charge were they?

A. In charge of a captain or lieutenant.

Q. Was their conduct orderly or otherwise?

A. Entirely orderly.

Q. Did they pass in sight of any polling places in the city?

A. I think there is no polling place there. I am sure there is not.

Q. This is on Main street?

A. Yes, sir; between Sixth and Seventh.

Q. Something has been said about these people—how long did your regiment remain in Louisville after you were ordered back from Puerto Rica before you were discharged?

A. We came back from Puerto Rica—

Q. What time did you get to Louisville?

A. On the 10th I think it was, of December.

Q. At what time were you discharged?

A. Finally mustered out the 21st of February.

Q. Then you were there more than two months?

A. Yes, sir; but we were paroled after the first six weeks.

Q. How many soldiers had you when you came back from Puerto Rica?

A. I suppose we brought back 1100 men.

Q. Where did you quarter them in Louisville?

A. At the Bamberger-Bloom building.

Q. Is that the same building that you used as an armory?

A. No, sir; the armory was just opposite the Bamberger-Bloom building; the armory we used for a store room.

Q. This same building as you now use as an armory was used when you came back to Louisville to store your property in?

A. Yes, sir.

Q. Could you get any other building than this one?

A. The real estate agent said that he had examined and looked at every vacant building in Louisville.

Q. This was the only one you could get?

A. That was the last resort.

Q. I will get you to state whether or not you had any orders from the Governor in regard to clothing your regiment, as to when it should be done?

A. None whatever. The first communication between the Governor and our regiment came from our regiment when we

notified the Adjutant General that we had rented a building, and wanted the supplies.

Q. I will ask you if the Governor did not state that he would not issue the arms and clothing until you got an armory?

A. You told us that when we came up to see you about it in August.

Q. Was your effort to procure an armory done in the interest of politics, or was it done simply and solely to prevent the disintegration of the regiment?

Objected to. The Chair rules that he can state so far as he be concerned.

Q. I will ask you this question: What were your reasons, Colonel Gray, for trying to organize this regiment and get an armory, and obtaining the arms?

A. I did not organize the regiment. The regiment was organized and then they elected Col. Mengel and myself Colonel and Lieut. Colonel; and it then became our duty to obtain an armory as soon as we could, and Col. Mengel waited on the Mayor, and he made promises as to what he could do, and the promises were not carried out by the Council.

Q. (By counsel for contestant.) Were you present when those promises were made?

A. I saw the letters, and the officers were coming to me and saying that the men were getting impatient.

Q. (Mr. Bradley resumed.) Please answer this question: In what you did after you became Lieutenant-Colonel of this regiment, what were you governed by—what motive were you governed by in trying to get an armory and getting the arms?

A. I wanted to organize the regiment, and keep them from going to pieces.

Q. Was it or not your motive, to have anything to do with politics in the organization or the use of that regiment?

A. Not a particle. Politics cuts no figure in the organization of the regiment.

Q. Is it or not a fact that some members of the old Louisville Legion, or the First Kentucky, which was in the Spanish War, officers and men were at that time, and before that time, and even since, in the habit of wearing their uniforms?

A. I have seen them on the streets with their uniform since they were mustered out.

Q. Do you know Senator Allen, who sits on this Board?

A. Yes, sir.

Q. I will ask you whether or not you have seen the Senator with a military coat on during the session of the Senate?

A. No, sir; I have not seen that.

Re-examined by Mr. Phelps.

Q. That old Legion has been mustered out for ten months?

A. The old Legion was mustered out after we returned from the Spanish war.

Q. You have not seen any of the old Legion wearing a uniform as late as November, 1899?

A. Yes, sir.

Q. Who?

A. I don't know, but the matter was brought to my attention lately, and a request was made to know if that could not be stopped in some way—prevent the men from wearing the old uniform with the "L" "L" on the corner, and to see whether we could do anything to stop it, and I told the men they had no authority to stop them.

Q. At the time the present Legion was organized you were assistant cashier of the Bank of Kentucky?

A. Yes, sir.

Q. What position did John M. Atherton hold in that bank then?

A. The same as now—vice president.

Q. John M. Atherton is vice president of the bank in which you are assistant cashier?

A. Yes, sir.

Q. What connection did he have with the L. & N. Railroad?

A. None that I know of.

Q. How much money did John M. Atherton contribute to get this new armory?

A. None that I know of.

Q. Who took up that collection?

A. A committee. Col. Belknap and Charley Hughlin.

Q. He is a Republican?

A. I think not.

Q. He is manager for the B. F. Avery Company?

A. Yes, sir; and I think Ira Barnett.

Q. He is the cracker man on Jefferson street?

A. No, sir, used to be.

Q. You were furnished with a list of twenty-one polling places to which you were to take your soldiers under arms. Who gave you that list—who picked them out?

A. I don't know, they came to us from the Governor.

Q. Do you know who gave them to the Governor?

A. I haven't any idea.

Q. You spoke of an order given to you by the Governor, some private written instructions?

A. Yes, sir, that he read.

Q. Those instructions in which he told you to use the blunt end of your weapons first. Was that published to the people or kept quiet?

A. None of these instructions were published that I know of.

Q. You applied to the County Judge of Jefferson County when you were preparing the organization of this Legion, and the County Judge told you that it was not the proper time to organize the militia?

A. That was told to the committee.

Q. Did you turn over this militia or their control, or offer them to any civil authorities—I mean the Sheriff or Jailer or Mayor of the city?

A. No, sir.

Q. Was the Sheriff there when the regiment was called?

A. Yes, sir.

Q. Did not the Sheriff warn Col. Mengel on the night of the election about exciting trouble by calling out the militia at that time; did the Sheriff call on you?

A. Yes, sir.

Q. Did he protest with you on that subject?

A. The Sheriff came in; he was pretty excited, very red; and he said you have no authority to call out the militia; you have an illegal regiment. I am the chief peace officer of this county; this election has been perfectly fair and square; and if you go on the streets with the soldiers you will precipitate a riot that cannot be quieted, and I will hold you personally responsible for the trouble that will come.

Q. That on election day?

A. Yes, sir, the night of the election.

Q. You knew he was the properly constituted Sheriff of the county?

A. Yes, sir.

Q. You knew the Mayor?

A. Yes, sir.

Q. You did not go to see him about it?

A. I had no orders to go to see him about it?

Re-cross-examined by Mr. Sweeny.

Q. I am requested to ask you if the Sheriff of your county was not the chairman of the Goebel County and City Committee?

A. I believe he was.

Q. I will ask you if you would have known where to find the Jailer that day if you had wanted to find him?

A. I did not hear the whereabouts of any of the officers except the Mayor. I don't know where he was.

Q. You knew at the time that Governor Bradley was Governor, and that he is the chief peace officer of the State?

A. I was under his orders.

Q. And you knew he was Governor and chief peace officer of the State?

A. Yes, sir.

Q. As he has never had to face a Gatling gun, I will ask you where that Gatling gun was in that armory?

A. About half way back on the first floor.

Q. Could the Gatling gun have been taken out of the door without being taken to pieces?

A. No, sir.

Q. Where was the other one?

A. In the cellar; the other Gatling gun was disabled.

Q. I will ask you to state whether your soldiers under your command, or the command of Col. Mengel, any of them ever went to the polling places except under command of an officer after seven o'clock?

A. No, sir, not to my knowledge.

Q. I will ask you whether or not your soldiers under your command, interfered in any way, manner or form, with the right of any citizen of Louisville in the right of franchise?

A. No, sir.

Q. Considering the large territory over which Louisville is scattered—the policemen of the city of Louisville number 275?

A. So I understand.

Q. They were scattered that day over the entire city at the various voting places: with your knowledge as a military officer, and your knowledge of the city of Louisville, if a mob of three or four thousand people had congregated, an angry mob of citizens, could the Police Department have possibly gotten enough policemen together to have protected the lives and property of the citizens of Louisville?

A. I think not. That is why we had our men ready in case any trouble arose.

Q. I am requested to ask you if Mr. Walter K. Belknap, the gentleman whom you have mentioned, was Colonel of the Louisville regiment when it returned from Puerto Rica?

A. No, sir, he was promoted to a Colonelcy upon Gen. Castleman accepting the commission of Brigadier-General. After he came back he was appointed Colonel, and I was appointed Lieut. Colonel.

Q. How long has Morice K. Belknap been in the old Louisville Legion?

A. He was a private when I was, back in 1879, and was in for three years then; and then severed his connection with it, and he came back as Captain, I suppose about six years ago, and was a Captain and afterwards Lieut. Colonel.

Q. An efficient and good officer?

A. First rate.

Re-examined by Mr. Phelps.

Q. You say it would be necessary to take the Gatling down in order to take it out of the armory?

A. Yes, sir.

Q. How long would it take the men to take this gun and take it to pieces and put it up?

A. They could take it down and take it out in about five minutes.

Q. You have made a criticism, though a question, about the Sheriff being a member of a Committee of the Democratic party. Was that the reason that you did not put the militia under his command?

A. No, sir.

Q. Col. Mengel, your superior officer, was a member of the Republican Committee?

A. I don't know.

Q. Gov. Bradley, the man in charge, was making speeches through the State and in the city of Louisville for the Republican ticket?

A. No, sir; he did not make a speech in the city.

Q. You state on oath that he did not make a speech in the city of Louisville?

A. The one he had come to make he did not make.

Q. Was he to make only one speech in the city of Louisville?

A. I don't know that.

Q. You knew that the Governor was interested in the Republican State ticket?

A. I knew that.

Q. So that as far as having an interest on one side or the other the man under whose order you were acting has had as much interest on that side as the Sheriff of the county had on the other?

A. No, sir, not near as much. One man had his interest in politics without any money in it, and the other man—it was his bread and butter.

Q. Which one had his bread and butter in it?

A. The Sheriff.

Q. Was his office dependent on this election?

A. No, sir; he was interested in his party more as an office-holder than if he was an individual.

Q. You did not speak of the Governor, you spoke of the Colonel of your regiment?

A. I don't know anything about the Governor. No, he is going out of office.

Q. The other man is going out when his term is up?

A. No, sir, he is a candidate for Mayor.

Q. The Governor was trying to get out of one office into another—

S. A. Graves, being duly sworn and examined by Mr. Hendrick, deposed as follows:

Q. Mr. Graves, I will get you to state your name and place of residence?

A. Sam Graves; 1016 West Chestnut.

Q. Louisville?

A. Louisville—yes, sir.

Q. Where were you on the 7th day of November last?

A. 28th precinct of the 10th ward.

Q. Were you there in the capacity of an officer, in any way connected with the election?

A. No, sir; only as a worker at the polls, that was all.

Q. Were there any soldiers there on that occasion—did you see any about the polls?

A. No, sir; I never saw any.

Q. Did you see any one leave the polls on that day without voting?

A. Yes, sir.

Q. Just tell what occurred there—what you saw and heard?

A. Well, along between 10 and 12 o'clock, something like that I reckon, there was a lady that came up there and inquired for her husband or brother, I don't know which it was, but any way she found him and took him away from the polls, and said the militia was right around the corner, they were coming, and through the excitement there was at least 20 or 30 left there: it broke the whole thing off.

Q. 25 or 30 voters?

A. Yes, sir; and never came back.

Q. Didn't return any more?

A. No, sir; they never came back.

Cross-examined by Mr. Sweeney.

Q. You were there as a worker in the interest of what ticket, Mr. Graves?

A. Democratic ticket.

Q. What is your business in the city of Louisville?

A. Foreman.

Q. You belong to the Fire Department?

A. Yes, sir.

Q. Was it your regular day off, or did you have a substitue in you place?

A. I had a substitute in my place.

Q. How many of the firemen in the city of Louisville had substitutes on that day?

A. Now, I could not say; I don't know.

Q. You don't know?

A. No. I know that that day, the 7th day, there was a man a man off in each house, it was his regular off day; and how many men laid off at those houses I don't know.

Q. Who was this lady, do you know?

A. No, I don't know: it frightened off some of the people and I went too; I was scared.

Q. What were you scared about?

A. About that trouble.

Q. You didn't know what that trouble was?

A. No, sir.

Q. You gave your deposition about a week ago, didn't you?

A. To-day a week—yes sir.

Q. You were asked then to give the name of that party, were you not?

A. Yes, sir.

Q. You stated in response that, that you could find out who the lady was, and would do so, and report it, did you not?

A. No; I said then to you, I said then to you, if it was necessary I thought that I could find out who the party was, but you never asked me to do it, and that was an end of it.

Q. You don't know whether this lady captured a Republican or Democratic voter, do you?

A. No, sir. Whoever he was, he didn't vote, I will say that.

Q. Everything was peaceable and quiet outside of that that you speak of?

A. Yes, sir; but after that it was more or less all day long.

Q. Did any soldiers come there?

A. I didn't see any.

Q. You were there all day?

A. All day—yes, sir.

Q. When did this occur?

A. Between the hours of ten and twelve o'clock—it must have been a little earlier than ten o'clock.

Q. In the morning?

A. Yes, sir.

Q. Will you give to the Committee the name of a single solitary voter that left that precinct at that time?

A. No, I could not.

Q. On account of the disturbance that you speak of?

A. No, I could not.

Q. How do you know that they didn't come back?

A. Because I was right there—I was right in line with them. There may have been one or two of them came back, but I don't think there was any of them.

Q. Acquainted with the precinct fairly well?

A. No; that is the first time I ever voted in it in my life; the books will show that.

W. C. Blankenbaker, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. Where do you reside?

A. Louisville, Ky.

Q. How long have you lived there?

A. Ten years.

Q. What is your business?

A. Police officer.

Q. How long have you been a police officer?

A. Four years and a half.

Q. Were you at a precinct in the city of Louisville on the 7th of November last—election day?

A. Yes, sir.

Q. Do you know John Marshall, the contestee for the office of Lieutenant-Governor?

A. Yes, sir; I did.

Q. Did you see him on election day?

A. I saw him three or four times.

Q. I will ask you if you know anything of any threats made by him to use the Federal officials, the Marshals, against you or any other officers who were there on duty, or any voters, or any officers of election? Tell all that you know on the subject.

A. Yes, sir; Mr. Marshall came there about ten o'clock, I believe it was, and brought a negro with him—

Q. A little louder, please?

A. Brought a negro voter there with him; he put him in front of the line. I was standing across the street, and somebody put him out of line; he called me out in the street, and asked me what right that man had to take that man out of line. I said, "Did you put him in line?" He says "Yes." I said, "What right did you have to put him in the front of the line?"

Q. What do you mean by "In front of the line?"

A. Well, they were lined up ten or fifteen, I think—maybe more.

Q. Do you mean, voters?

A. Voters.

Q. And he put that man in front of the line of the other voters?

A. Yes, sir; and he called three or four men out in the street; he says "If this man exercises the duty of a police officer anymore here to-day, go up to the United States Court and swear out a warrant for him, and anybody else—officers or anybody else.

Q. Did you hear him say anything to anybody else there that day?

A. I heard him say it after that?

Q. Who to?

A. There were five or six in the street, I didn't know them.

Q. Were you arrested by United States Marshals that day?

A. I was.

Q. Had you done anything at all, committed any offense?

A. I didn't think I had.

Q. Well, just tell what you had done?

A. About half-past three o'clock in the evening, the Sheriff of the election called me over to the polls, I was standing across the

street. I went over, and he said, "Officer, I want you to put this man out of here." I said, "What is the matter with you, you are the Sheriff of election; can't you put him out?" He said, "I have tried to put him out, but I can't." I said, "Ain't he entitled to vote?" He said, "No, he don't belong here, he don't vote here, and he has no business in here?" I said, "Mr. Sheriff, it is your business to put this man out, and I will protect." The Sheriff tried it, and I reached in and pulled the man out of the door, and told him to go on away. About half an hour after that a United States Marshal came and got me.

Q. Anybody else arrested by United States Marshals at that precinct that day?

A. The Clerk of election was arrested.

Q. During the election?

A. No, after the vote was counted he took him.

Q. Do you know of others being arrested that day—officers of election, by United States Marshals?

A. There were several made, but not at that precinct.

Q. Do you know anything about Mr. Marshall offering to give a check to anybody there on that day?

A. When Mr. Marshall brought this man there and put him in the polls, I think he put him there three times, he said: "Now, I will give any man fifty dollars that puts him out of the poll."

Q. Why did he do that?

A. I guess—

Objected to.

Q. What is the name of the Marshal that arrested you?

A. Mel James.

Q. Marshal of the United States Court?

A. Yes, sir.

Q. The Marshall that you refer to is John Marshall, the candidate for Lieutenant-Governor?

A. Yes, sir; I know him.

Q. I say that is the man you refer to?

A. Yes, sir.

Cross-examined by Mr. Sweeny.

Q. You were there at the precinct all day, were you?

A. All day, yes, sir.

Q. What precinct was that?

A. Third precinct of the Eighth Ward.

Q. About where is that located in the city?

A. Sixth and Walnut.

Q. You say Mr. Marshall was there some two or three different times during the day?

A. During the morning, yes, sir.

Q. You were arrested about what time, you say?

A. I think it was a little after four o'clock; something like half past four. It was after the polls were closed.

Q. After the polls were closed?

A. Yes, sir.

Q. The Clerk, I believe you have stated, was also arrested?

A. Yes, sir.

Q. Was that arrest made before the polls closed, or after the polls had closed, and the vote counted and certified?

A. Of the Clerk, you mean?

Q. Yes, sir.

A. It was after the vote was counted.

Q. After the vote was counted?

A. Yes, sir.

Q. Who was the Republican Inspector at that precinct?

A. I don't know; I didn't know any of them.

Q. Who was the man that you pulled out?

A. His name was Henry Rose.

Q. Was he, or not, an officer of the election?

A. Rose?

Q. Yes, sir.

A. No, sir; he was a colored gentleman.

Q. Colored gentleman—you did have colored clerks and judges in the city of Louisville at that election did you not?

A. Not at that place.

Q. In the city, I asked?

A. I don't know about that.

Q. Didn't you have, in the city of Louisville, colored judges and colored clerks who claimed to be Democrats and were acting and appointed by the Commissioners of Jefferson County, acting as Democratic officials in that city on that day?

A. I don't know; I didn't know any of them—I didn't see any of them.

Q. Didn't you see that stated in the paper?

Q. (By Mr. Kohn.) Where is that man Rose that had you arrested, the colored man that had you arrested for interfering with him?

A. In the Lunatic Asylum.

Q. (Mr. Sweeny resumes.) Didn't you have in the city of Louisville colored judges and colored clerks who claimed to be Democrats and were acting and appointed by the Commissioners of Jefferson County, acting as Democratic officials in that city on that day—didn't you see that stated in the paper?

Objected to; overruled.

A. I don't know; I don't remember if they did.

Q. Now, in reference to Mr. Marshall coming to the polls, you have stated to the Committee that he came with a negro and placed him at the head of the line. Now, I will ask you if this was not true in regard to that, that this negro voter, to whom you have referred that came with Mr. Marshall, had been there some three or four times to vote, and had been refused the privilege of voting by the election officers?

A. I think he had.

Q. Now, I will ask you the additional question, if Mr. Marshall didn't ask the consent of the voters there present to put him at the head of the line, as he had been sent away three or four times to get proof of his right to vote?

A. Not until after he called me over.

Q. I will ask you this additional fact, that when that darky went in to vote, if the election officers didn't require him to prove by two white men where he resided?

A. I don't know anything about that; I wasn't in the polls.

Q. Then I will ask you this question, if the election officers when these two men did come and prove or state to the election officers that this darky was entitled to vote, and where he lived, if they didn't still refuse to let him vote?

A. Well, I can't answer that question because I wasn't in the polls.

Q. Then I will ask you this question, if, after he went and got other witnesses to prove where he lived, and satisfied the election officers upon that question as to his right to vote so far as his residence was concerned, if they didn't require him to go out and get two more witnesses before they would allow him to vote, to prove that he had never killed anybody?

A. I don't know anything about that.

Q. Then I will ask you after he had gone and gotten those two witnesses, if he didn't have to go and get two more witnesses to prove that he had never been in the Penitentiary, before they would allow him to vote?

A. I don't know anything about that.

Q. Were you within the fifty foot limit of the poll while you were acting as an officer?

A. Only once, and that was while I was called over there by the Sheriff.

Q. There was no trouble or disturbance at your polls?

A. No, sir.

Q. Everything went off quietly and peacefully?

A. Yes, sir.

Q. There were no soldiers about your polls?

A. I didn't see any.

Q. No one attempted to interfere with you in any way?

A. No, sir.

Jacob H. Haager, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Your name is Jacob H. Haager?

A. Yes, sir.

Q. Where do you live?

A. I live at the corner of Third and Brandeis, at Louisville.

Q. Do you hold any official position in the City of Louisville at this time?

A. Yes, sir.

Q. What is it?

A. Chief of Police.

Q. How long have you been connected with the Police Department of the City of Louisville?

A. A trifle over ten years.

Q. Who was the Chief of Police on the 7th of November of last year, the election day?

A. I was.

Q. Colonel, what precautions, if any, had you adopted prior to the election to keep the police out of politics, and out of the election; what had you done, if anything, in that direction?

A. Well, I had drawn up a lot orders that I thought would cover the case, taken them before the Board of Safety for their approval; they were approved. I expected to be called upon, and I have a copy of that orders in my pocket.

Q. Will you exhibit it, if you please, and show it to the counsel on the other side first?

The witness here produced the order.

Q. Is that the official order that you issued?

A. Yes, sir.

The order reads as follows:

Department of Police, Office of the Chief.
Louisville, Ky., Oct. 30th, 1899.

GENERAL NOTICE.

The herewith attached orders concerning the election to be held Nov. 7th, 1899, will be read before each platoon on Monday, Thursday and Saturday of this week, also on Tuesday, Nov. 7th, 1899, and will be placed on file in some conspicuous place at each station, so that it can be seen and read by all members connected with this department. By order of

J. H. HAAGER,
Chief of Police.

Department of Police, Office of the Chief,
Louisville, Ky., Oct. 30th, 1899.

GENERAL NOTICE FOR ELECTION NOVEMBER 7TH, 1899.

The following detail is hereby made for election day, Tuesday, November 7th, 1899:

The following named officers will report at their respective stations at 6:30 o'clock a. m., to be assigned as set forth below.

All men detailed to odd numbered precincts will go to their dinner and vote from 11:30 to 12:30 o'clock. All men detailed to

even numbered precincts will go to their dinner from 1 to 2 p. m.

Where two or more officers are detailed at one precinct they will be divided into two reliefs, one half remaining at the precinct while the other half goes to their dinner and vote.

Officers will remain near the precincts where detailed until the vote is counted, then accompanying the election officers who have charge of the ballot box to the Court House, they will then immediately report at Central Station for further orders.

All members of this department are hereby warned that under no circumstances will they take any part, either by word or action, in the election, by advising as to locating precincts, ballot boxes, books, etc., and must remember they are detailed at precincts solely for the preservation of order, and must not arrest anyone upon the complaint of another, excepting superior police officers and judges of criminal courts, unless the party making the complaint accompanies the officer to the City Hall to swear out a warrant; they must only make an arrest for bribery and breaches of the peace committed in their presence, and are expected to conduct themselves in a dignified manner, and under no circumstances enter into a discussion with any one concerning the election.

Should any citizen request an officer to arrest a person for a violation of the election laws and the officer is not satisfied in his own mind that the accused person is guilty of an unlawful offense, he will then go to the nearest telephone and call up Central Station, relate the facts and ask for further instructions.

Immediately upon arriving at their respective precincts where assigned, it shall be the duty of the police to measure off a distance of fifty feet on all sides of the precinct and mark a line with chalk or a like substance, and must not permit any persons to congregate or loiter inside said lines, excepting election officers and Challengers and such voters that are passing to and from the voting place, should any person than the above mentioned, including candidates, stop or loiter within the fifty-foot line or any place within fifty feet of the voting place, it shall be the duty of the officer to notify such person that he is violating the law and promptly request him to step outside of such prescribed fifty feet space and should he refuse to promptly obey the command of the officer, he will immediately arrest the offender and call the patrol wagon.

Officers detailed at precincts will form a single file of all persons claiming to be voters of such precinct, the same to be formed with the head of such file resting on the fifty-foot line, and will permit only such number of persons to leave the head of such file to enter the voting place as the Sheriff of the precinct from time to time says is then entitled to enter. Crowding or pushing in such line or file must not be permitted.

No person will be permitted to give up his place in the line to another, and should any person leave the line temporarily he will be compelled to again take up his place in the rear.

Section 1470 of the Election Law says that each political party is entitled to have one Challenger to represent them in the voting room at each precinct.

Section 1471 of the Election Law says that each political party is entitled to have one Inspector at each voting place, to witness and inspect the counting of the votes in each precinct. The above Challengers and Inspectors are required by law to have before their admission in a voting place credentials signed by the Chairmen of their respective Executive Committees.

The members of the Police Department are hereby warned that it is not their duty to pass on the credentials of any person representing himself to be a Challenger or Inspector, that duty being imposed by law upon the election officers, and police officers will not interfere in such cases, unless requested by the election officers.

It shall be the duty of all police officers to promptly arrest any intoxicated person found in or near any voting place, also any noisy or boisterous person who loiters about voting places.

Should any candidates or other persons unjustly criticise, annoy or harrass any police officer in the performance of his duty the officer will promptly telephone to Central Station and assistance will be dispatched immediately.

Officers must not be quick in making arrests in personal matters concerning themselves and should any person criticise their conduct he will request the citizen to communicate his grievance or complaints to headquarters and not enter into personal quarrels with any one.

All members of this Department are hereby instructed to promptly arrest any person detected in the act of committing bribery by the use of money or by any other means. The above orders have this day been approved by his honor, the Mayor, and the Board of Public Safety, and all members of this Department are hereby instructed to govern themselves accordingly.

By order of J. H. HAAGER, Chief of Police.

Q. I will ask you, if you please, to file that as a part of your evidence, Colonel?

A. Yes, sir.

Q. Colonel, what effort was made to have that order disseminated amongst the members of your force?

A. There were seven copies of that order printed; we have in the city of Louisville five station houses; there was one placed at each station house, and I kept two at headquarters, and the other was given to the public press. That order was published a week before the election. That was all the outcome of a promise that

was made by the Mayor, the Board of Public Safety and myself to the business men's meeting at the Board of Trade some couple of weeks before the election. I made this promise to the Board of Trade that I would issue an order, and gave my word that I would stick to it.

Q. What was the purpose of that order?

A. Well, there were people there trying to create the impression that the police had interfered with the primary election of June 12th, and we had received a great deal of notoriety from some speakers over the State—unjust notoriety.

Q. What was the object in issuing this notice?

A. To impress upon the police particularly that it was their duty to obey the instructions, and to enforce the law.

Q. What effort, Colonel, if any, did you make to see that this order was enforced?

A. Well, in connection with that, you will observe that I had that order read four times; three times at different times the week prior to the election, and on the morning of the election. And on the Monday before the election I called the Captains and the Commanding Officers before me and instructed them and impressed it upon them to look out for somebody trying to come around and use them later on, and saying this or that didn't go, that was grandstand play, and to impress upon them that every word of it was meant.

Q. Was it issued and promulgated in good faith, or for any secret purpose?

A. I want to say that if ever I told the truth in my life, I told it at the Board of Trade meeting, and I meant it.

Q. Was that the Honest Election League meeting, or non-partisan meeting?

A. I got an invitation to the meeting, that it was a meeting of representative business men; I don't know whether it was the Honest Election League, or what not. I went on that invitation.

Q. I will ask you whether the tenor in that order was carried out on election day by the police of the city of Louisville?

A. I want to say that I was at headquarters, and it is the rule, and it is the law for any policeman in the city of Louisville, under our Metropolitan Act—it is the duty for them to be reported, and they are then reported to the Board of Public Safety and tried. There has not been a single complaint lodged against any policeman.

Q. By neither party?

A. No, sir. I want to say there was two or three policemen arrested that day; among them was Officer Blankenbaker, who was just ahead of me, and I don't think there was anything in any of the cases.

Q. You mean Officer Blankenbaker that was arrested by the United States Marshals?

A. Yes, sir.

Q. Did you investigate the matter yourself?

A. I want to say, when the Marshal arrested him he brought him to the City Hall to me. I asked Mr. Blankenbaker if he had violated my order. He said he had not. I said "If you have overstepped this order, lookout for yourself; if you didn't, I will take care of you." I then got him a bondsman.

Q. Did you hear any complaint from any members of the Republican party, or this Honest Election League, or from anybody, of any violation of the spirit or letter of that instructions on election day by any of your men?

A. No, sir.

Q. Now, Col. Haager, how was the election conducted on election day; I mean as to whether it was orderly or disorderly?

A. I can unhesitatingly say that it was the quietest election I ever saw in the city of Louisville.

Q. Was there any fact, or state of fact or circumstance existing in the city of Louisville to justify the calling out of the militia, or to make it necessary?

A. Not in my opinion—no, sir.

Q. Was there any state of facts or any trouble that your police force was incompetent of handling?

A. I think not, sir.

Q. Will you tell us, Colonel, how many you had in your police force?

A. There are 330 on the pay-roll; of course, that includes all of the station keepers, and matron on down, and the wagonmen.

Q. How many men does that include?

A. Well, there are about, I suppose, 290 patrolmen out of that 330.

Q. Besides the officers?

A. Yes, sir.

Q. Now, Colonel, on election day, were you or your men interfered with in any way on election day, and if so, I will get you, without my bothering you with questions, just to relate to these gentlemen what occurred?

A. The only way that I could say that I was interfered with, things were going along all right, and these injunctions were served on me.

Q. Will you tell all about that, what happened, and what was said to you on the subject; go ahead in your own language?

A. Well, on the day of the election, about 11 o'clock in the morning, Mr. Joe O'Neal and one of the deputies, I can't remember, I think it was Mr. Moore, from the Sheriff's office, served on me an injunction, of which I haven't a copy. I want to say that the members of the legislative committee got that copy from me, and I haven't got it back; it contains all the names of the election officers.

Q. Is that the order that was issued in the election case, in the case of John Young Brown vs. Charles P. Weaver, Jacob H. Haager and others?

A. Yes, sir; that is the one.

Q. Now, go ahead and tell what occurred?

A. I took the order and I seen that the order didn't concern me in any way at all, I paid no attention to it. Then again about half past three in the afternoon I had another injunction served on me. That injunction called for me, as Chief of Police, to see that the men that were appointed as Inspectors, and had a slip to be signed—a credential signed by Alf Davis, as Chairman, I think it was—I have got it in my pocket, you had better——

Q. You can consult it to refresh your recollection?

A. This here is the case of John Young Brown vs. Charles P. Weaver and others.

Q. That is the second one that was issued?

A. Yes, sir; this here contains all the phraseology of the law in a paper of this kind, but the only section that concerned me, I will read that section. This is the section of the order that concerned: "And the defendant Jacob H. Haagar, as the Chief of Police of said city, is hereby enjoined and commanded to instruct the policemen of said city that the Inspectors aforesaid, viz.: the Inspectors representing the Republican party and having appointments as such Inspectors signed by said Alf W. Davis, Chairman Republican County Executive Committee, have a right to enter the said voting places and witness and inspect the counting of the vote therein, and he must not be interfered with in the exercise of such right." I want to say that when that was served on me I read it and stuck it in my pocket; I never thought anything of that. If you will notice in reading that section, it says that I shall see that these Inspectors shall not be interfered with. I took it that the order meant that my police should not interfere with the Inspectors. Some time after the close of the polls Mr. Bob Kinkead came to me at Central Station—

Q. Introduce him to these gentlemen; who is Mr. Bob Kinkead?

A. Mr. Kinkead is an attorney in the city of Louisville, and was a candidate for Park Commissioner on the Republican ticket; I suppose that is what you want me to tell.

Q. Just go ahead.

A. So Mr. Kinkead came to me and he says, "Haager, don't you intend to respect that last injunction served on you?" I said, "Why, Mr. Kinkead, I don't see that that injunction has got anything to do with me; I am respecting it; none of my police are interfering with the Inspectors, are they?" He said, "Oh, but you are misconstruing that." I said, "Oh, I guess not." I then pulled this from my pocket and read it again, and I want to say that Mr. W. L. Lyons, the Chairman of the Board of Safety,

and Mr. Tierney, member of the Board of Safety, together with two Captains of Police, and the Station Keeper, were in the room at the time. He said to me, "Now, you are misconstruing that; that means that you are to exercise the authority vested in you, and through the police to see that these men are not interfered with, not by the police, not that the police should interfere with them, but to see that nobody else should interfere with them." I said, "Well, I differ with you, I don't take it that way." Mr. Lyons taken it, and he read it. Well, there seemed to be a difference of opinion as to what this meant, this interference, and Mr. Lyons said to me, he says, "I think that you had better go out and have this looked into." I said, "I don't know who I am going to have look into it." Mr. Kinkead then said that he could bring me some further evidence to assure me that that was right, that it was right the way he was construing it. I then argued the point with Mr. Kinkead. I said, "Why, our City Attorney claims we have no right to interfere with the election one way or the other, and this puts us to passing on credentials." I said, to Mr. Kinkead, "Where is Judge Toney at?" He says, "Well, I can get word to him, and get you word". I said, "All right, I don't believe Judge Toney means that." He said, "All right, I will show you that I am right, and you are wrong". He goes off and gets a letter.

Q. I want to ask you whether the first injunction which was served, the one between eleven and twelve, was the one about the Brown Inspectors, and the last one about the Republican Inspectors?

A. As near as I can recollect.

Q. Will you please file that order of injunction that was served on you?

A. Yes, sir.

The said order reads as follows:

JEFFERSON CIRCUIT COURT.

John Marshall, ... Plaintiff,
vs.
Charles P. Weaver, etc., etc., ... Defendants.

At a Court held on November 7th, 1899, the following order was entered, viz.:

On motion of plaintiff, John Marshall, it is ordered by the Court as follows, viz.:

All officers of election to be held on November 7th, 1899, in the county of Jefferson, including the city of Louisville, State of Kentucky, and all persons acting, or pretending to act as such officers are enjoined and commanded to admit to each of the several voting places at which such officers or others shall severally

officiate on said day, an Inspector representing the Republican party, provided he produces a written or printed appointment signed by Alf. W. Davis, Chairman Republican County Executive Committee, which admission shall be as soon as the polls close on said day, or whenever thereafter such Inspectors shall demand admission, and permit him to remain and witness and inspect the counting, and certification of the vote at such voting places, and give to him on his demand a duplicate properly signed, of the certificate as to the vote of such precinct, and in all other respects to treat and recognize him as a lawful Inspector under the law, and to grant him all the rights which the law gives to Inspectors of Elections. And the defendants, Charles P. Weaver, as Mayor of the city of Louisville, and W L. Lyons, Edward Tierney and R. Lee Suter constituting the Board of Public Safety of the city of Louisville, are enjoined and commanded not to give or cause, or allow to be given to any policeman of the said city, or other person, any order interfering with any such Inspector as is above described, or entering, or attempting to enter such voting place or performing or attempting to perform any of his duties as such Inspector, and if any such order has been given, they are commanded to revoke the same, or cause it to be revoked, and cause such policeman or other officer to be notified of such revocation.

And the defendant, Jacob H. Haager, as the Chief of Police of said city, is hereby enjoined and commanded to instruct the policemen of said city, that the Inspector aforesaid, viz.: the Inspectors representing the Republican party, and having appointments as such Inspectors, signed by said Alf. W. Davis, Chairman Republican County Executive Committee, have a right to enter the said voting places and witness and inspect the counting of the vote therein, and he must not be interfered with in the exercise of such right.

The amount of the injunction bond herein is fixed at $1,000.00.

On November 14, 1899, at or about the hour of ten o'clock, a. m., in the court room of the division of the Jefferson Circuit Court to which this action is then assigned, or if not assigned to any division, then in the court room of the Law and Equity Division of said court, the plaintiff in the entitled court will move the court to grant an injunction pursuant to the prayer of the petition herein. And the foregoing order shall remain in full force until such motion shall be heard and determined. Defendants and all persons are warned that this order is binding upon them from the time they are informed thereof. A copy attest.

JOHN H. PAGE, Clerk.
By L. MERIWETHER, Deputy Clerk.

Q. Now, go ahead with your story?

A. Mr. Kinkead went off, and he came back. This is a copy of a letter that I got from Judge Toney, signed by Judge Toney.

Q. By Col. Breckenridge. Where is the original, Mr. Haager?

A. I have the original in my office; I don't like to let these things get away from me.

The said letter reads as follows:

LOUISVILLE, November 7, 1899.

J. H. Haager, Chief of Police,
City:

Dear Sir:—It being represented to me that you desire information from me as a Judge of the Jefferson Circuit Court whether it is your duty to instruct your officers to inform the election officers that it is their duty to allow the Inspectors mentioned in the two orders of injunction issued by me this day to enter, be present at, witness and inspect the counting of the vote in the various precincts in the city of Louisville, I have to say that the order contemplates your giving such instructions to your officers and seeing that such Inspectors are allowed entrance to the precincts and voting places for such purpose.

(Signed) Respectfully,
STERLING B. TONEY,
Judge L. & E. C.

A. Now, I want to say that me and Mr. Kinkead got into another discussion over this letter.

Q. First, please file that with the stenographer as a part of your testimony?

A. Yes, sir. Now, you will notice this letter says "I have to say that the order contemplates your giving such instructions to your officers and seeing that such Inspectors are allowed, etc." I then asked Mr. Kinkead how far we should go in that way. He said, "It is your duty to see that these men are not interfered with, even if it is necessary to arrest the election officers for them to let them in." I said, "That is driving us right into politics, that our legal advisers and our City Attorney said we could not do." So I says to Mr. Kinkead, I says, "Now, I don't intend to mix up in this election, I will tell you that I do not intend to respect this order." Mr. Lyons, the President of the Board, said, to use his words, "Now, Jake, go slow there, don't talk too fast." I said, "This looks like it is driving the police into the election, and it has been my intention and my promise to any number of business men, that I did not intend to have anything to do with it." Mr. Kinkead then said, "Well, I want to tell you, Haager, if you don't do it Governor Bradley is in the city with the militia, and he will see that it is done." He said, "I want to tell you right now you are killing a heap of time here." Well, I says to Mr. Kinkead, "I am not satisfied either with the way the injunction reads or the letter reads." I said, "Where is Judge Toney, I will see him in person." Mr. Bruce Helm, or Helm Bruce—what is his name?

Q. He is one of the attorneys of the L. & N. Railroad, isn't he?

A. I don't know whether he is or not.

Q. He is the son of Judge Bruce?

A. Yes, sir. He says, "I will show you Judge Toney, you seem to doubt these papers." He took me up to Judge Toney's office—up to Mr. Clarence Walker's office in the Louisville Trust Building. Judge Toney was there. I want to be frank with you. The Judge is a very good friend of mine, and I am a very good friend of the Judge's. I said, "Judge, you sent me this injunction, and then you sent me this letter. Now, I want to talk to you as two friends; you don't want to get me into any trouble, I don't believe." He said, "No, I don't." I said, "Judge, to be frank with you, I doubt your authority to order the policemen to take any hand in this matter." He said, "Whenever I give an order of this Court, I have the right to call in all the officials of the city of Louisville to enforce it." He said, "There is nothing for you to do but to go ahead and enforce it." I said "Alright Judge," and I left the office and went down to the Central Station.

Q. Was there any talk between you and the Judge as to how you were to enforce it?

A. Oh, yes, I then said to him, "Judge if you say then it is my duty to go ahead and obey your instructions, you see the notice of injunction says that I shall see that those Inspectors are not interfered with?" "What do you mean by that?" He says, "I mean for the police to see that nobody interferes with these men gaining admission into the voting places." I says, "Well, suppose the election officers refuse, and all of the polls are now locked up and closed, and they are counting the votes." He said, "Instruct your police to demand admittance for these men, and if they don't allow these men in, kick the door open and lock up the men." I went back and reported to the Board of Safety, and that time the full Board was in the office. I then reported the conversation to the Board—the conversation I had with Judge Toney, and the Board of Safety went into session, and ordered me to go ahead and do as he instructed me; and this is the order of the Board of Safety.

Q. Now, you may read that if you please?

The said order reads as follows:

City of Louisville, Board of Public Safety.

Louisville, Ky., November 7, 1899.

Col. J. H. Haager, Chief of Police. Dear Sir:—Your attention is hereby called to the following adopted by this Board at 5.50 p. m., and you are hereby instructed to govern your Department accordingly.

"Whereas, Judge Sterling B. Toney, Judge of the Law and Equity Division of the Jefferson Circuit Court, has this day by

his order of mandamus directed the Chief of Police and the Board of Public Safety of this city, to use the police force of the city to have installed in the various voting places what are known as "Brown and Davis Inspectors."

Now, we the Board of Public Safety, hereby instruct the Chief of Police to obey said order of mandamus notwithstanding we believe the same to be erroneous, we taking the ground that the police have no right to interfere with the officers of election.

By order of the Board of Public Safety.

(Signed:) J. H. SHEA, Secretary.

Q. Was that order sent out to your police, and executed?

A. Yes, sir; I immediately took the telephone and notified each station house to get the word out.

Q. You gave orders to your police to force the Brown Inspectors and the Republican Inspectors in?

A. The best I could under the circumstances; I telephones it right and left, and I want to say that the members of the Republican party were then streaming into the office complaining about here and there that the police were not seeing that people were admitted, and I would dispatch a patrol wagon whenever they gave me instructions that anything was going on wrong, and where they refused to admit them, and went in person with a couple of them myself.

Q. Do you know anything about the militia being called out in Louisville?

A. Well, no, sir; I was in the City Hall all day, and never got out; I don't know anything about it, only what I heard. Of course, you would not allow me testify to that?

Q. Do you know whether there were any threatening or incendiary speeches made prior to the election with reference to the militia, as to what was to be done with them?

A. I think that is what necessitated this meeting at the Board of Trade.

Q. What was the nature of those announcements?

A. Well, here was a great deal of what I considered—

Q. Colonel, will you say to the gentlemen of the Commission whether there was anything occurred in the city of Louisville, either before the election or on the day of the election to give rise to any apprehension of a mob, or any necessity for the militia?

A. No, sir; not during the day, nor when the polls closed, because when they notified me that the election officers would not admit Inspectors, I dispatched police there and broke the doors open and saw that they got in. I want to say I don't believe there were over fifteen or twenty precincts in the whole city out of the hundred and odd that refused to let them in.

Cross-examined by Governor Bradley.

Q. Mr. Haager, you say that you think that the threats about the use of the militia caused the meeting of these business men, or the Board of Safety, which was it?

A. Oh, no, sir; if I said that, Governor, I didn't say it that way; I didn't mean to say it that way.

Q. Let us see how you said it?

A. I said that people were so apprehensive, to correct myself, to be reported correctly, that that is what caused the meeting at the Board of Trade.

Q. Then you didn't say that the threats of using the militia caused the meeting at the Board of Trade?

A. No, sir; I did not.

Q. What did you do with the first order of injunction you say that you got—that first order of injunction that was served on you—you had a copy of it?

A. I stuck it in my pocket.

Q. What did you do with it; where is it?

A. I want to say that there was another Committee had me summoned in the Louisville Trust Co. building, and I left it on the promise that it would be returned to me, but it has not been returned to me yet.

Q. How many orders of injunction were served upon you?

A. Two.

Q. You had the other one with you?

A. Yes, sir.

Q. And read it here a while ago?

A. Yes, sir; that was the last one.

Q. And the first one you filed with a deposition?

A. In fact, I taken it over there, and they taken this one, too, they kept both of them, but I kept a copy of this one. I inquired about it, and I have been told I would get them back.

Q. I believe you said you had 290 patrolmen in Louisville?

A. Yes, sir.

Q. How many special police were appointed?

A. I think 275 is the correct number—275 or 276.

Q. Were these police scattered over the city at the vaious polling places?

A. My regular police were—the uniformed men.

Q. How many of them?

A. 290 were placed at the polls.

Q. 290 policemen were placed at the polls?

A. Yes, sir.

Q. Now, in the case of a riot in which any considerable number of people were engaged, could you, or not, have assembled your police in time to have overcome it?

A. Yes, sir.

Q. Suppose a thousand people had been engaged in a riot, how long would it have taken you to have assembled your police?

A. I want to say that I have 275 extra men, and I could have got in, I think, at least 250 out of that 290 inside of an hour.

Q. Inside of an hour?

A. Yes, sir.

Q. But it would have taken you an hour to have done that?

A. Yes, sir.

Q. In your judgment there was no necessity for the use of soldiers or the calling out of soldiers in Louisville?

A. Yes, sir.

Q. This injunction was served on you, the first one, at eleven A. M.?

A. About that, Governor, I don't know; I think it was about that time.

Q. And you didn't take any steps until after five?

A. I want to say that that first injunction did not concern me at all; I had no reason to have any information—

Q. When was the second injunction served on you?

A. It was just prior to the closing of the polls, between half past three and four o'clock.

Q. That is the one that you went to see Judge Toney about?

A. That is the one I stuck in my pocket, that I didn't think had any reference to my police.

Q. What are the politics of Judge Toney?

A. He is a Democrat, elected as such.

Q. Was he a Democrat in favor of Mr. Goebel, the contestant?

A. I don't know, Governor; I have never spoken a word to him about that.

Q. You don't know; you simply know he is a Democrat, understood to be?

A. Yes, sir.

Q. It was after five o'clock now when you left Toney's office—after six, was it?

A. Oh, no.

Q. Five, I understood it?

A. No, sir; I would jndge it was—well yes, it was between five and quarter after five; it was about a quarter after five when I got back.

Q. Now, how many Inspectors did you put in these polls?

A. I want to say, Governor, that this is the way I done it. Mr. Marshall and the other members that were interested, as fast as they would get a report, they would either telephone it to me or send it to me; a great many of them were sent to me in person; I have a note of all of them, too, and I think there is twenty of them; but I haven't got that with me.

Q. You think you put Inspectors in at twenty of these polls?

A. Yes, sir.

Q. No more than that; you can't tell what precincts they were?

A. I can; I have got it down at the office, but I overlooked it.

Q. Will you send us a list of that as a part of your testimony?

A. Yes, sir.

Q. By Col. Breckinridge. Capt. Haager, are you very well acquainted with the city of Louisville?

A. Born and raised in the city.

Q. Were there any persons who had heretofore been Democrats, and who have been registered as Democrats, who were anti-Goebel men at this last election?

A. Judge, you ain't putting that clear enough for me. How is that?

Q. I mean, within your knowledge, were there in Louisville any persons who have heretofore been ranked as Democrats, and registered as Democrats, who, in this last election, were against Mr. Goebel?

A. Well, I would think there was some—yes, sir; Brown Democrats.

Q. Well, either Brown Democrats, or Democrats who were going to vote for Mr. Taylor; isn't it true that within your knowledge there were a good many Democrats, who registered as Democrats, who, at the last election, voted either for Gov. Taylor or Gov. Brown?

A. Not knowing how they voted, I could not tell you one way or the other.

Q. Don't you know, as a matter of fact, that there were a good many Democrats who have heretofore been known as Democrats and registered as Democrats who were openly or publicly opposing the election of Mr. Goebel?

A. Only the Brown Democrats.

Q. How many of them were there?

A. I would have to go through the vote down there, and I didn't pay that much attention.

Q. Do you mean to say to this Committee that there were no Democrats, who registered as Democrats, who voted for Mr. Taylor?

A. I don't know of any.

Q. You don't know of any?

A. No, sir; I don't know of any.

Q. You don't know of any who announced their purpose so to do?

A. No, sir; I do not.

Re-direct examination by Mr. Phelps.

Q. You were asked about special police, and I understood you to say you had 275, was it?

A. Yes, sir.

Q. Where were they kept during the election day?

A. Kept in the Station Houses; never got out.

Q. So that if they were needed, they could be used at once?

A. Yes, sir.

Q. Were they used at all?

A. No, sir.

Re-cross-examined by Col. Breckinridge.

Q. Did you select those policemen?

A. That is not my duty.

Q. That is not the question; did you select them?

A. No, sir; I had nothing to do with the selection of them.

Q. Did any one call on you for a list of persons proper to be selected?

A. Never had anything to do with that whatever.

Q. Did you know before hand who were to be selected as these extra police?

A. No, sir; that would put me in the light of inquiring into my superiors' business. I never have anything to do with a policeman until he is selected and sent down to me, and then I take charge of them.

Q. Were there any persons among these extra police who were, in your judgment, not proper characters to be sworn in as police?

A. No, sir; not to my knowledge.

Q. Weren't there some there known to you to be ex-convicts?

A. No, sir; if there had been any there I would have put him out.

Q. Did you put them in uniform?

A. No, sir; not one of them.

Q. Do you know who did select them?

A. The Board of Safety selected them.

Q. You know that the Board of Safety nominally, officially selected them; do you know who actually selected—by whom these persons were actually selected?

A. I don't know, sir.

Q. You have no information on that subject?

A. No, sir; none whatever.

Q. Were there any firemen in that list, among those extra policemen?

A. I don't know; but I feel safe in saying there were not, because I think I know all the firemen, and I don't remember seeing a fireman in there—I don't remember seeing any.

Re-direct examination by Mr. Phelps.

Q. You were asked about the difficulty, in case of a riot, in getting your police together; I will ask you if there is not a riot alarm that can be rung, and get the police together at once?

A. There is—yes, sir.

Q. There was no riot, or no danger of a riot, was there?

A. None in my opinion.

F. C. Nunemacher, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. What is your business?

A. I am a printer.

Q. What are your politics?

A. Republican; I suppose I am; just at this stage I can't state what I am.

Q. That is what your politics were heretofore, or at the last election, anyhow?

A. Yes, sir.

Q. Do you know anything about printing orders of injunction, and summonses, and petitions, in the case of John Young Brown, or blanks for that case, against Charles P. Weaver and others, which were presented here by the Clerk the other day?

A. Yes, sir.

Q. How many of those did you print?

A. In the neighborhood of five hundred, I think.

Q. Who gave the order to print them?

A. Mr. Helm Bruce.

Q. What time did he give you the order?

A. He gave me part of the order on the morning of November 4th.

Q. When did you print them?

A. We printed them on the night of November 6th.

Q. Why did you print them at night, on November 6th, the day before the election? What instructions did he give you on the subject how they were to be printed, and who was to take care of them?

A. The request was made by Mr. Bruce that they should be printed privately, that none of the employes should know anything about it; therefore I set up the form myself assisted by my Superintendent, Mr. Frank P. Allen.

Q. At night?

A. Yes, sir.

Q. You printed them these five hundred for Mr. Helm Bruce, under instructions to keep it quiet, to let no one know anything about it?

A. Yes, sir.

Q. And you got the order on the morning of the 4th, and you printed them on the night of the 6th; is that correct?

A. No, sir; the idea was we were to set it up as we could, without letting our employes know anything about it, and we got through that work on the night of the 6th; we don't work on Sundays, and we had to finish it on the nights of the 4th and 6th.

Q. What time did you deliver them, and to whom did you deliver them?

A. I delivered them to Mr. Helm Bruce at my office on the night of November 6th.

Q. What time of night?

A. Well, I could not say exactly; I think it was in the neighborhood of ten o'clock.

Q. Ten o'clock at night?

A. We had to do it after the other employes left the office.

Q. Mr. Helm Bruce is one of the attorneys of the L. & N. Railroad Co., is he not?

A. I understand he is not.

Q. Helm & Bruce?

A. No, sir; not regular attorneys of the L. & N. Railroad.

Q. He is the son of Judge Bruce, the chief attorney of the L. & N. Railroad Co., isn't he?

A. Yes, sir.

Q. Don't you know that Helm Bruce is a partner of Mr. Jim Helm, and that Helm & Bruce are attorneys of the L. & N. Railroad Company?

A. They are in special cases, I understand; but not regular attorneys of the L. & N. Railroad Co.

Q. And you are the printer, I believe, of the L. & N. Railroad Co.?

A. I have been for sixteen years.

Q. Now, Mr. Helm Bruce was not an attorney in the case of John Young Brown against Weaver which was exhibited to you at all, was he?

A. I have no knowledge of that, Mr. Kohn.

Q. Did you do any other printing for Mr. Helm Bruce at that time, besides these orders?

A. You mean, in addition to the order of injunction?

Q. Yes; you printed a summons, I think you said—any others?

A. No, sir; I don't remember.

Q. In whose handwriting, if you know, was the order of injunction, in which it was named to be returned to the Hon. Sterling B. Toney?

A. I don't think I could tell you anything about that.

Q. That was all brought to you by Mr. Helm Bruce?

A. Yes, sir; I don't think it was written—all written by one person.

Q. Have you the originals?

A. I don't know, sir.

Q. Will you try to hunt them and send them up here, the originals from which you printed those things?

A. I think it is doubtful; I think we destroyed them, or they were taken away.

Q. Who was the man that assisted you at night in printing them?

A. Mr. Frank P. Allen.

Q. Did Mr. Bruce assign you any reason why he didn't want anybody to know what was going on?

A. No, sir.

Q. Didn't want your employes to find it out?

A. No, sir; we have had work of that character heretofore; not from Mr. Bruce, however.

Q. What are Mr. Allen's politics?

A. I don't know; I never asked him; he came to me recently from Akron, Ohio.

Cross-examined by Mr. Sweeny.

Q. Who paid you?

A. Mr. Helm Bruce.

Q. For the bills—for the things that were printed?

A. Yes, sir.

Q. (By the Chairman.) You say it was on Saturday that he came to you first?

A. With the first part of the copy. In order that you may understand it, they brought the list of names, which Mr. Kohn has found so long, to us on the morning of Saturday; we sent that through the office as a regular job—put it in the name of a customer of ours—the list of election officers—just a list of election officers; that customer was P. E. Allison; he is a personal friend of mine, and I took that liberty with him, and we sent that through as a regular job, because there was more composition in that than the other matter; that was set up by our regular employes. Then we set up the other part of the document.

Re-direct examination by Mr. Kohn.

Q. And that you finished on the night of the 6th, and delivered it at ten o'clock at night?

A. Yes, sir.

By Mr. Kohn. By consent, we desire now to file as evidence, the certified copy of the Secretary of State as to the number of votes cast at the last election for the office of Governor, which, by consent of counsel, may be considered read.

COUNTIES.	GOVERNOR.					
	(D.) William Goebel.	(I. D.) J. Y. Brown.	(R.) William S. Taylor.	(Pop.) John G. Blair.	(Pro.) O. T. Wallace.	(S. L.) Albert Schmutz.
Adair	1,243	93	1,608	7	13	----
Allen	1,185	55	1,489	----	17	3
Anderson	1,152	67	1,127	----	12	2
Ballard	1,391	45	555	----	5	3
Barren	2,743	71	2,059	----	24	1
Bath	1,574	59	1,580	----	22	----
Bell	645	24	1,494	7	8	2
Boone	1,886	193	697	1	8	----
Bourbon	2,174	57	2,200	14	27	7
Boyd	1,470	17	1,868	5	20	1
Boyle	1,453	45	1,442	13	31	7
Bracken	1,718	18	1,178	1	31	----
Breathitt	1,506	26	750	----	5	----
Breckinridge	1,722	86	2,129	66	42	2
Bullitt	1,154	45	675	2	11	----
Butler	910	42	2,178	9	6	----
Caldwell	1,041	158	1,512	77	7	6
Calloway	2,125	41	647	93	11	1
Campbell	4,701	172	4,640	8	23	88
Carlisle	1,207	33	469	69	32	----
Carroll	1,471	179	696	1	28	----
Carter	1,483	19	2,095	4	20	1
Casey	1,090	14	1,521	2	20	----
Christian	2,816	112	3,471	30	43	6
Clark	2,169	87	1,736	8	18	1
Clay	478	10	1,387	3	9	1
Clinton	322	9	998	1	3	----
Crittenden	1,327	77	1,701	25	12	1
Cumberland	481	17	1,076	6	11	1
Daviess	3,811	251	3,274	68	69	6
Edmonson	736	28	978	12	8	1
Elliott	1,165	3	620	2	----	----
Estill	933	14	1,183	32	6	1
Fayette	3,538	188	3,277	8	32	2
Fleming	1,958	43	1,890	11	34	1
Floyd	1,238	46	1,082	5	12	----
Franklin	2,471	100	1,416	34	18	3
Fulton	965	62	369	12	29	5
Gallatin	881	34	402	2	4	----
Garrard	1,198	14	1,297	6	46	2
Grant	1,710	116	1,423	3	25	1
Graves	3,757	237	1,682	144	29	2
Grayson	1,243	145	1,963	200	20	1
Green	1,081	60	1,324	12	4	1
Greenup	1,322	23	1,556	2	15	1
Hancock	835	28	1,031	30	3	----
Hardin	1,950	387	1,726	53	27	----
Harlan	223	23	1,309	3	6	----
Harrison	2,457	117	1,539	9	41	1
Hart	1,646	102	2,086	6	14	----
Henderson	2,944	157	2,107	57	60	4
Henry	2,051	105	1,563	12	21	----
Hickman	1,433	40	637	24	31	2
Hopkins	2,307	262	2,597	110	40	2
Jackson	224	22	1,541	2	1	----
Jefferson	15,023	2,672	18,445	40	110	170
Jessamine	1,391	92	1,185	6	53	1
Johnson	837	21	1,715	4	8	2
Kenton	6,792	359	4,576	20	42	36
Knott	873	----	438	----	----	----

COUNTIES.	GOVERNOR.					
	(D.) William Goebel.	(I. D.) J. Y. Brown.	(R.) William S. Taylor.	(Pop.) John G. Blair.	(Pro.) O. T. Wallace.	(S. L.) Albert Schmutz.
Knox	730	19	2,115	7	7	
Larue	1,127	89	1,000	17	11	
Laurel	919	19	1,849	24	12	2
Lawrence	1,720	19	1,869	8	6	102
Lee	588	10	770		10	
Leslie	84	5	1,052	3	2	
Letcher	371	5	830	3	2	
Lewis	1,352	17	2,197	25	20	
Lincoln	1,752	26	1,774	3	57	3
Livingston	1,233	17	803	50	6	1
Logan	2,494	211	2,462	131	26	3
Lyon	809	47	665	43	12	
Madison	2,802	86	2,893	12	37	1
Magoffin	835	11	1,161	3	2	
Marion	1,785	63	1,399	4	12	
Marshall	1,081	112	720	201	9	
Martin	167	9	640	1	3	
Mason	2,729	60	2,357	10	26	4
McCracken	2,184	200	1,778	55	23	67
McLean	1,081	45	1,083	52	21	
Meade	1,054	61	791	19	4	4
Menifee	651	45	403	2	3	
Mercer	1,381	134	1,667	35	47	1
Metcalf	952	42	1,079	8	7	
Monroe	750	8	1,562	13	8	
Montgomery	1,356	145	1,408		11	2
Morgan	1,558	20	986	19	8	
Muhlenberg	1,397	175	2,095	27	21	2
Nelson	1,959	112	1,271	13	26	
Nicholas	1,627	89	1,184	17	28	
Ohio	2,239	104	2,824	74	35	3
Oldham	765	123	589	7	10	
Owen	2,975	165	1,200	16	32	
Owsley	243	9	1,039	4	2	
Pendleton	1,682	78	1,554	19	30	4
Perry	433	9	903		3	
Pike	1,726	94	2,150	4	28	
Powell	698	22	611	2	4	1
Pulaski	1,659	110	3,205	43	25	7
Robertson	674	10	469	2	7	1
Rockcastle	812	12	1,528	4	13	1
Rowan	643	28	814	7	5	1
Russell	578	12	985		15	
Scott	2,218	89	1,868	6	29	
Shelby	2,322	137	1,825	44	33	2
Simpson	1,270	85	795	36	53	1
Spencer	882	64	551	10	12	
Taylor	1,029	44	1,101	40	21	
Todd	1,512	101	1,725	31	15	1
Trigg	1,180	84	1,188	57	8	1
Trimble	993	191	362	2	14	2
Union	2,538	54	1,116	47	14	2
Warren	2,495	709	2,655	36	45	1
Washington	1,615	59	1,433	18	28	1
Wayne	1,193	21	1,386	2	6	2
Webster	1,776	80	1,671	59	21	2
Whitley	730	25	3,091	10	14	1
Wolfe	846	44	655	5	9	
Woodford	1,446	54	1,399	9	11	
Total	191,331	12,140	193,714	2,936	2,346	510

COMMONWEALTH OF KENTUCKY.

Office of SECRETARY OF STATE.

I, Caleb Powers, Secretary of State for the Commonwealth aforesaid, certify that the foregoing is a full, correct and complete statement of the vote cast in Kentucky at an election held on Tuesday, November 7, 1899, for William S. Taylor and William Goebel for Governor and for J. C. W. Beckham and John Marshall for Lieutenant Governor as shown by the certificates of the canvassing boards of the various counties of the State now on file in my office.

IN TESTIMONY WHEREOF, I hereunto sign my name and cause my official Seal to be affixed. Done [SEAL.] at Frankfort this 17th day of January, A. D. 1900.

CALEB POWERS,
Secretary of State.

By W. J. DAVIDSON,
Assistant Secretary of State.

J. Smith Hays, being duly sworn and examined by Mr. McQuown, testified as follows:

Q. State your name, place of residence and occupation?

A. My name is J. Smith Hays, my residence is Barbourville, Knox county, Kentucky; my profession is lawyer.

Q. How long have you resided in Barbourville?

A. I have resided right in the city for about 12 years, and was raised in that county.

Q. Were you an officer at the election in November, 1899?

A. Yes, sir, I was clerk of the election in Ward No. 1 in Barbourville.

Q. Tell what you may know, if anything, in reference to the character of ballots used in your precinct in that election, and what you know upon that subject?

A. I don't know whether I could describe it as well as the ballot would show for itself or not. The ballot was not very heavy, it was rather transparent; there was some question raised about it as soon as we went in that morning into the voting place.

Q. Do you know from having seen yourself and from having heard and observed what others said in the polling place while the election was in progress anything about whether the stencil marks could be seen from the back of the ballot?

A. Well, I saw a very few ballots, after they had been voted, a few of them were laying upon the table. I was writing here as clerk, just over there they detached the secondary stubs, and I saw, when they were flattened upon the table, as they had been folded by me, when I gave it to the voter, and as he had voted, having

returned it, I saw on one or two, may be a half dozen or more, the print of the stencil, I thought, I didn't examine it to see whether that was it exactly or not, but I took it to be that.

Q. Well, did you hear anything said by an officer while that election was going on in reference to how people were voting?

A. Yes, sir.

Q. State what you heard?

A. Well, I wrote at this end of the table; it was a little cold that morning; I moved to the other end of the table, and then they detached the secondary stubs at my back, put my feet to the fire. I remember that on one occasion Mr. Ben Dishman was taking off most of the secondary stubs, he remarked, after a voter had gone out of the room, that was the first time he ever knew that he was a Prohibitionist, and other remarks like that, and the other Judge would sometimes go over and look at the ballots. That led me to suppose they saw how the vote had been voted. I remarked to Mr. Dishman and to Mr. Henchman, who was the other Judge, that even though they saw the stencil, it was improper to speak anything about how the vote had been cast.

Q. I show you three ballots; I will get you to say whether or not these are the kind and character of ballots that were used in your county then in that election, 1899?

Mr. Sweeney. Are they the ballots that were filed here?

Mr. McQuown. No, sir.

Objected to; objection overruled.

Q. There is one that appears to have on the back of it two names?

A. I have examined all three of the ballots that were handed to me by the gentleman, and I find from my recollection of the character of the ballot used up there, and from the signature of the clerk on the back of the ballot, and the marks on the back of the ballot, my judgment is that is one of the ballots that was prepared for use in the election November 7, 1899, for Knox county.

Q. There is another name on the back of that ballot, is there not, beside the County Clerk?

A. Yes, sir.

Q. Whose name is that?

A. L. J. Ley, a gentleman who resides on Brush Creek in Knox county.

Q. That is signed by him, as Clerk, is it?

A. Yes, sir, I don't know who signed it.

Mr. Breckenridge. You don't mean to testify that is his signature?

A. No, I don't know his signature. The other two are exactly like the other, and for the same reason, excepting as to the one name, I think these are also ballots that were prepared for use in that election.

Mr. McQuown. I want to put them in evidence and have them marked filed.

Contestees object to the filing of those ballots because not identified by the officer whose duty it is to procure the ballots nor by the County Clerk as the ballots used.

Judge Yost. It has been stated that the name of L. J. Ley was on the ballot. I will ask you to look at them and state if it is on those two or not?

A. No, sir, it is not on those two.

Cross-examination by Mr. Breckinridge.

Q. You were Clerk of the election?

A. Yes, sir.

Q. It was your duty to write your name on the ballot and hand it to the voter?

A. Yes, sir.

Q. When he returned the ballot, what was, under the law, the mode in which this ballot ought to have been folded and handed to the Judge whose duty it was to deposit it?

A. It would be my opinion, but when I tore the ballot off, I prepared the ballot in this way, I folded it up and detached it and then I signed my name here, and handed it to the voter, who would go into the booth with it just that way, and generally folded it that way and returned it and handed it to Mr. Dishman.

Q. The duty of the voter was, was it not, to fold that so that the Judge had nothing to do but to tear off the subsidiary ballot stub and drop it in?

A. That is what they did.

Q. If they had been folded in that way, the subsidiary stub could have been easily torn off, could it not?

A. I don't know about that, I never tried it; I should think it could.

Q. There is a subsidiary or secondary stub there?

A. Yes, sir.

Q. Folded that way, you tear it just as easily as though it was folded that way (indicating)?

A. Yes, sir, I should think so, especially if the perforation is good.

Q. If it had been folded in that way, was there any way by which it could have been seen?

A. I couldn't answer that, because I never looked to see.

Q. Look now; what is your judgment now, and folded so it could go into the ballot box in the mode in which it could be dropped into the box, could it have been seen at all?

A. Well, I couldn't tell whether it could or not. I see there, folding this way, when you fold up there, you see there is one, I can tell; there is the devise in there, and if the stencil had been under it, and you had looked at that side, you might possibly have seen it, I don't know.

Q. Do you mean to say that you have any knowledge as to whether these ballots were ballots that were ever distributed in that county at all?

A. I never saw these ballots, or either of them, that I know of until to-night.

Q. And you don't mean to say that any of these ballots were anything more than like unto ballots prepared for Knox county?

A. Yes, sir.

Q. There is nothing in the face of the ballot to show that it is a Knox county—

A. There is nothing except there is the name of L. W. Hampton, but he was a candidate in Whitley as well as Knox.

Q. So if the same printing office prepared ballots for Knox and Whitley out of the same paper, this would be like unto the Whitley county ballot as well as to Knox county ballot except for the fac-simile?

A. The endorsement there.

Q. That is not done in anybody's handwriting?

A. No, sir; but that is the name, though, the fac-simile signature of Mr. Parker, I think.

Q. But whether done before or after this ballot was used—whether before or after the election you don't know?

A. No, sir.

Q. You don't know anything about where this ballot came from?

A. Nothing only what I heard.

Q. From what source it came or how it got to you?

A. No, sir.

Q. You do know that the law requires that all unused ballots shall be destroyed, do you not?

A. Yes, sir.

Q. You do know that these ballots are unused ballots, because they have no marks under any of the devices?

A. Yes, sir.

Q. You therefore do know that these ballots, if they were ever distributed have been preserved contrary to law and in violation of the law by somebody?

A. They have been preserved, whether in violation of the law or not—

Q. You are a lawyer?

A. I am.

Q. And you were clerk of that election?

A. Certainly.

Q. You are familiar with the election laws?

A. I think so.

Q. And don't you know, therefore, as a lawyer familiar with the law that the preservation of these unused ballots if they ever were official ballots, is a violation of the law?

A. I should think that it would be a violation of the law in the sense that the letter of the law provided it should not be done. Necessarily a man must have a guilty purpose in order to be guilty, I should think.

Q. There is a penalty against having them in anybody's possession, is there not?

A. I believe there is. But I think that is confined to election day, I am not sure.

Q. If those ballots were never official ballots, then nobody has committed any violation of the law, have they?

A. I expect not.

Q. If they were, for any reason, not the official ballots, there was no necessity for destroying them?

A. Certainly, but I should think it would be a violation of law to print a ballot that was not official on white paper because the law provides—

Q. It is undoubtedly. Do you know how that ballot ever got in anybody's possession?

A. I only know from hearsay.

Q. Lawfully?

A. I only know from hearsay.

Q. Is there anything on that ballot to show that it was questioned and counted, or questioned and refused, and therefore returned to any clerk or other officer of the law?

A. No, sir, nothing on the ballot.

Q. Have you any knowledge, if it is a violation of law, who would violate the law in preserving this ballot?

A. No, sir, I have no knowledge as to who preserved it.

Q. Of course, you didn't have any part in it?

A. No, sir, I did not. I can tell you what I heard about it.

Q. I am not entitled to prove what you have heard.

Mr. McQuown: He may answer the question; we don't object to it.

Mr. Breckinridge: I don't believe it is well by consent to have illegal testimony. I am willing to have legal testimony. I will ask you if you have any knowledge as to who were the Commissioners who appointed the election officers?

A. Well, yes, sir, I never saw their commission, but I have knowledge as to who did it.

Q. You know who appointed you?

A. Yes, sir.

Q. You have your authority from them?

A. Certainly.

Q. Who were they?

A. D. W. Faulkner and W. S. Woodson and J. W. Jarvis.

Q. You are a Democrat, I believe?

A. Yes, sir.

Q. Were those three all Democrats?

A. No, sir, one was Republican.

Q. Do you know whether they appointed all the election officers in Knox county?

A. Only from hearsay, I suppose they did.

Q. In Knox county, Mr. Hays, was the vote at the last election an unusually large or small vote?

A. No, sir.

Q. It was about such a vote as is ordinary in that county?

A. I believe it was a little less than the Bryan and McKinley vote. A little less, I am not sure about that.

Q. And the relation between the votes cast for the various candidates was about as usual, was it not?

A. Yes, sir.

Q. Did Governor Taylor receive in proportion to the entire vote about what Mr. McKinley had received in proportion to the entire vote?

A. Yes, sir.

Q. And Governor Taylor received in proportion to the entire vote about what Governor Bradley received?

A. I don't remember about Governor Bradley's race.

Q. It was also true, was it not, that there were some Democrats who had voted before for the Democratic party but did not this time vote for the Democratic nomination or were so understood?

A. I know it was so understood; I don't know how they voted.

Q. Then you don't know personally how they voted?

A. No, sir.

Q. But you do know that there were gentlemen who always claimed to be Democrats who were opposed to the election of Mr. Goebel?

A. Yes, sir, I believe I need to correct that last statement in a sense; I know how one voted, as I told you awhile ago, when there, hearing the remark at my back.

Q. As far as you know, was any voter in Knox county disfranchised of his vote because of this ballot, the thinness of the ballot?

A. I should think not disfranchised in the sense—

Q. Was there any change, so far as you know, of a single vote, and if so, will you name it, caused by the texture, quality or appearance of this ballot?

A. Not to my knowledge there was not.

Q. Was there in the county of Knox any change whatever, so far as you know, in the votes cast caused by this, the character or composition or nature of the ballot upon which those men voted?

A. Not to my knowledge, there was not.

A Committeeman. Whose fac-simile signature is on the ballots you have handed—

A. Mr. John Parker, the County Court Clerk of Knox county.

Mr. Breckinridge. Do you know whether the full Democratic vote polled in that county was certified by the Commissioners?

A. No, I do not, Colonel; I was not there at the time the certificate was made, and in making up their certificate; they wouldn't admit me; I went there and wanted to to be admitted but they wouldn't admit me.

Q. You have seen the vote of the county as returned have you not?

A. I don't believe I have; I might have done so, but I don't recall.

Q. Was there any complaint made at your poll when those ballots were being counted, you being an officer of that election, as to those ballots, and any one of them returned by you as an officer of the election as questioned?

A. Yes, sir.

Q. How many of them?

A. I believe it was 39 or 42, I forget which.

Q. Were they questioned because of the character of the paper or because of the paster that was pasted on them about the vote of John H. Wilson?

A. The immediate cause of the question was because of the paster that was on the ballot.

Q. That was the ground upon which they were returned?

A. Yes, sir.

Q. And how many votes were cast in that precinct?

A. I couldn't answer exactly, I think it was 370 or '75.

Q. So that out of 370 ballots, each of them being precisely like the other in the original texture of the paper and the character of the ballot, 330 or about 330 were counted without question, and destroyed, and some 39 or 42 were returned as questioned ballots because of the paster upon which there was the name of John H. Wilson, is that—

A. That is correct.

Gen. John B. Castleman, a witness, being duly sworn, and examined by Mr. Kohn, testified as follows:

Q. Will you please give your name, age and occupation to the Commission?

A. John B. Castleman; Louisville; fire insurance.

Q. How long have you resided in Louisville, Major?

A. More than thirty years.

Q. I will ask you whether you were in the city of Louisville on the 7th day of November, last election day?

A. I was.

Q. And for a month or two previous to that?

A. I was.

Q. I will ask you whether—in the first place, what experience you have had in military affairs, and especially regarding the Legion of the city of Louisville?

A. I have had a good deal of unfortunate experience in military affairs.

Q. The length of time you have been in service in the Legion and in military affairs?

A. Beginning away back in 1861, and prior to that time, as a Fayette county boy; I have only recently had sense enough to get out of the military.

Q. You have had charge of the Legion for some time, have you not?

A. Ever since its reorganization, after the riots of 1877, up to the time of the Spanish-American war.

Q. I will ask you to state whether or not there was any occasion for calling out the militia—having the militia in the city of Louisville on election day in November, 1899?

Objected to as a question of opinion.

A. You ask whether there was any necessity for—

Q. For calling out the troops in service on the streets?

A. I can answer better perhaps, if you will permit me to state my own experience and practice in the performance of what I considered always a duty. I was made responsible for order in Louisville in a certain way for more than 20 years, for that matter for order in a large part of the State and there was never in all of that time any excitement or any reason to apprehend excitement that I did not place at the armory, for the protection of the State's property, which with the regimental property combined, was very valuable, which it was our duty to protect and guard. There was never in all of that time that I did not, when the excitement promised to be or was actually serious, that I did not call upon the Governor serving at the time for authority to protect that property, and even if necessary also to co-operate with the civil authorities in the protection of the public peace, but there was never in all that time any instance where I either permitted a man, or a body of men, to go on the street on election day with arms, or any man in the regiment to go on the street on election day in uniform. The assembling of a detail, whether large or small, in all that time was hardly ever known to the public, and inasmuch as attention has been called, and perhaps by inference, improperly called, to the service of troops in 1897, I will state that I asked the Governor's authority, as was my habit, to assist me to protect the State property, as was my habit, and those troops were placed under the control of the Lieutenant Colonel directly, being careful always to avoid any seeming political bias in the regiment; I always managed to keep a sprinkling of both political parties, and that Lieutenant Colonel was a Republican.

Q. Who was he?

A. Col. Belknap,—Lieut. Col. Belknap, and during the day there was a great deal of excitement, perhaps quite as much as I have seen at any time at any election in Louisville, and I was

appealed to by the Democratic committee, and strongly by Mr. O'Neal and Mr. Dunlap, to use troops for the purpose of dispersing a disorderly gathering of what was estimated to be about 2,000 men at 18th and Broadway, a smaller number but disorderly aggregation at 13th and Green, and some appeal for the same purpose was made to me by the Chief of Police, then General Taylor. In both instances I positively declined with the assurance to them that the regiment could not be used for any such purposes, that if the police, or a good number of them, got killed, and it was necessary to protect the public peace, we would do it, and we would not interfere with the gathering of the people together. I will state that it was our habit always to know the condition of things absolutely in Louisville in order to know how to deal with them, and we were perfectly familiar with the condition of things complained of, and I sent for people in whom I had confidence and asked that Mr. Todd, who was the Republican candidate then for Mayor,—that that committee and Mr. Todd be seen and I have assurance from them that no violence should be done, no disturbance to life or property was all I asked. I had nothing to do with their gathering together, and I tried to have assurance that there should not be a disturbance; that was all, and that was promised, and that was done.

Q. I will ask you to state whether or not if militia was called out, if it became necessary even to use it for the purpose of quelling a disturbance, whether or not it was your duty and your custom to place them under the civil authorities of the city of Louisville?

Objected to.

A. There never was in all that time but two occasions when it became necessary to take the troops out of the armory.

Objected to.

Mr. Breckinridge: That was not on election day?

A. Not on election day.

Mr. Kohn. In those two instances were they not under the civil authority?

Objected to, as it was not on election day.

Q. I will ask you to state whether or not it is true that you always co-operated with the civil authorities of the city of Louisville and acted, if acted at all, in the calling out of the militia, under their directions?

A. Not otherwise.

Q. I will ask you whether there was any necessity for the calling out of the militia on the 7th of November last?

Objected to.

Q. I will ask you this, whether you know what precautions were taken by the Mayor and the Chief of Police to give the citizens of Louisville an orderly and fair election, and whether or not there was any necessity for the interference of the military

power to give a fair election, and whether there was a peaceable election on the 7th day of November?

Contestees object to the clause "sandwiched" in about the military.

A. I made myself familiar with the precautions taken by the Mayor to preserve the public peace. I think they were ample.

Q. I will ask you to state whether or not you heard the orders given by the Chief of Police and know the precautions taken by him for that purpose?

A. I was present when the extra police, special police employed on that day were sworn in in several detachments by the Mayor, and heard the Mayor's instructions to each and every detachment.

Q. I believe you were a member of that special police?

A. No, I tendered my services as I have been in the habit of doing for years whenever it was necessary.

Q. State what those instructions were?

A. The instructions given by the Mayor were in effect the same to each detachment—that his attention had been called to the fact that probably some of the men about to be sworn in were under the impression that they were to be used for political purposes.

Mr. Breckinridge. How was that, General?

A. He had been informed and impressed with the idea that some of the men that were sworn in as special police had understood that they were to be used for political purposes. He wanted it understood that they were to be used solely for the protection of the lives and the property of the citizens of Louisville, and they were not permitted to go to the polls, they were to be assigned to the station houses nearest to which they lived respectively, and would not be permitted to leave those station houses unless ordered to do so.

Q. One other question. In all your experience with the militia, was there ever at any time just preceding an election publications made through the press of the city that militia had been stationed at the armory, and that they would be in use on election day?

A. As a rule, nobody knew when they were at the armory, and I remember that on the election day in 1897, some of the papers made the statement during the day that they had found there was a strong force on guard at the armory. We had to be very careful to avoid having the people feel, who were always good enough to have confidence in us, believe that we were going to abuse that confidence. We never made any parade of any military force during the election.

Q. I will ask you to state whether or not there were at this last election publications made in the papers threatening bloodshed, announcement of the militia, announcement of Governor Bradley—announcement that the Governor himself had arrived,

and that Governor Bradley would be Commander-in-Chief himself, and he had sent a note to Mr. Willson that he would not make a speech himself because he had to have charge of the military force himself—did you read those articles in the papers?

Objected to as leading.

A. I don't recollect particularly the articles in the papers, nor whether there were any articles in the papers seen by me that seemed to be by authority, but the general trend of the articles were not very pacificatory in their make-up.

Q. You were promoted, I believe, during the Spanish war?

A. Yes, sir.

Q. To what position?

A. Brigadier-General.

Q. The place where this armory was fixed was on Main street between 6th and 7th in Louisville. I will ask you to state whether that was a proper place for an armory, whether it was a public place, if it was much used by the public?

A. It was on a public street. I want to say I know very little about the armory except from hearsay. I was not in it, and I know really very little about it.

Q. I speak only about the place of location?

A. I should think the place would be a very inappropriate one.

Cross-examination by Mr. Sweeney.

Q. You gave your deposition a few days ago in the city of Louisville in the matter of the contest for some minor State offices, did you not?

A. Some contest, I don't know which one.

Q. I asked you then, if my memory serves me correctly, if you would file the correspondence between yourself and Governor Bradley in regard to the ordering out of the militia in 1897?

A. I told you that I would do so, if I could. I have overlooked the matter, and have not hunted it up. I will endeavor to do so and will send it, if I can find it, but I would say now, as I said then, that I made, as I stated here, and stated then, and I always did, application to the Governor for authority to assemble a guard, because whenever any conditions of unusual excitement existed, it was my duty to see that the men who furnished that guard were protected. Ordinarily it was my plain right to protect the property that was under my charge, didn't need authority to do that; but when the circumstances were extraordinary, I always applied to the Governor, and those troops were always, therefore, if the Governor granted the authority asked, placed under the protection of the law, and acted by authority of the Commonwealth.

Q. When the circumstances then, if I understand you correctly, were extraordinary you did not only order the usual and customary guard, but you called upon additional troops, or in other words ordered out additional troops?

A. My custom was to ask discretion.

Q. How many, if you remember, did you have at the armory in 1897?

A. I don't remember. Whenever the conditions were such as to make it possible that any force was needed, I usually put on a pretty strong guard.

Q. In 1897 were the conditions then any worse, so far as your knowledge of what or anticipation of what might happen, than they were last November, from rumored reports, newspaper articles, and election excitement?

A. No, I don't know that they were.

Q. You speak of the armory where these troops were quartered when your regiment came back from Puerto Rica; was it not quartered right across the street from where this armory is located now that has been spoken of?

A. The Government provided quarters for the Government troops, and the only comfortable house they could find in Louisville big enough to hold a large regiment was what is known as the Bamberger-Bloom building, and we were quartered in that by the Government; that was, however, only until the regiment could be paroled.

Q. Mr. Breckinridge. You did not answer where that was located?

A. I said the Bamberger-Bloom building; it was near the Louisville Hotel, I am not sure which building it is that they use as an armory now. I know the general location—beyond the Louisville Hotel.

Q. Will you file, if you can secure it, the originals or copies of the telegrams and letters, all correspondence between you and the Chief Executive of this State in regard to the calling out of the militia in 1897?

A. Yes, sir.

Q. Before this Board?

A. I stated I would.

Q. Now you say, General, you have had considerable experience in the military way, and that you have always reported to the civil authorities when the militia was ordered out. I will ask you the question as to whether or not if the Sheriff of the county had refused to call upon you, or refused to act with you, and the Governor had ordered you, while you were Colonel of the Louisville Legion, to take out your regiment, and perform a single duty, if you would have hesitated in doing so?

A. I don't understand a condition of things existing which would have put a man, who pretends to be a good soldier, in a position of disobeying an order. I don't know what I would have done. It would have depended upon the circumstances. The law requires that all legal orders shall be obeyed. I assume if the Governor would issue an illegal order, the subordinate would obey it.

Q. The Governor is the chief officer in command of the military in the State, is he not?

A. He is.

Q. He is also a civil officer?

A. Yes, sir.

Q. I will ask you if you did not obey the orders of the Governor in 1896 when you were the Colonel of the Louisville Legion, and reported, with your regiment more men than were in Louisville upon the day of the last election, to Governor Bradley, and not to the Sheriff of Franklin county?

A. I reported to the Governor.

Q. To Governor Bradley?

A. Yes, sir.

Q. And acted in obedience to his orders, did you not?

A. Yes, sir.

Q. Did you not feel at the time, and were you not satisfied, that you were acting under civil authority because of the fact that he was the Chief Magistrate of this State?

A. I obeyed the order without much question. I didn't exactly know what I was ordered here for, but I did what I was told.

Q. You would not have hesitated to have obeyed any order in reason that Governor Bradley, as the Chief Executive of the State, and the commander of the militia of the State, the chief officer in command of the militia of the State, had seen proper to have issued?

A. No, I couldn't say that, no.

Q. I mean any reasonable order?

A. Any proper order; the law specifically provides that an officer shall obey all legal orders. I think that is the wording of the statute. If it were an extraordinary order, an order that I thought was obviously illegal, I should have remonstrated, no doubt. I don't think I would willingly—I would exercise some intelligent discretion as an official.

Q. I said reasonable order. I didn't expect you to march your regiment into the Kentucky river, if he would have told you?

A. I will state, if you will permit me, in order that I may be understood. You asked me with regard to the extent to which I would obey an order. When I received an order to report to Frankfort with 300 men, on the following morning, the night was a bad one, and I had been an ill man for two weeks with inflammation of the bowels, and when I received the order I left a sickbed and obeyed it. I mention that to show to you the extent to which I thought it a duty to obey an order, even at the risk of my life, explaining at the same time that if I were not a Democrat, I would not have obeyed it. I would have explained that I was physically unable, but I could not afford to be put in a position of not obeying the order under the circumstances. That is why I came to Frankfort.

Q. You are fairly familiar, are you not, with the city of Louisville—?

Mr. Breckinridge here asked the witness a few questions as follows:

Q. Was the Governor present—the then Governor present—on the two occasions you have spoken of when you co-operated with the civil authorities?

A. The only two occasions where my regiment was ever under arms in active service on the streets of Louisville was during the Jennie Bowman riot, where we acted under the immediate personal direction of Judge William L. Jackson, complying strictly with the letter of the law. The only other occasion was—

Q. Right there, the then Governor was not present?

A. Not present. The only other occasion was when the cyclone occurred in Louisville, and a note was brought to me, which I have, by Judge Thompson and Mr. Harry Phillips, from Mayor Jacobs stating that he was ill, a great disaster had overcome the town, and the police were powerless, and asking that I would take charge of the town and protect the property and the lives of the people. I anticipated the action of the Governor, I believe it was Governor Buckner, to call the regiment into service, and went on duty, and the Governor ratified it the next day by issuing the order, and we remained during that time. Those are the only occasions.

Q. At that time did you report to any civil power?

A. To the Mayor.

Q. Did you report to the Mayor, or didn't you act under that letter from Judge Thompson and the Mayor?

A. Under that letter from the Mayor. Practically at the time we didn't even wait, under the exigencies, to be sworn in as special police, which we could have done, but the next morning the Governor ratified the order by calling us into service, and directing us to report to the Mayor.

Q. When you came to Frankfort, the Governor was personally present?

A. Yes, sir; I reported to the Governor.

Q. You didn't report to the Sheriff or the Mayor of the city of Frankfort, but reported directly to the Mayor?

A. I obeyed my orders and reported directly to the Governor.

Q. And obeyed whatever orders he gave you during that time?

A. Yes, sir.

Q. And made no report of any sort to any other civil officer than the Chief Magistrate, the Governor of the State?

A. That is all.

Q. In your service in the mountains on the several occasions, did you always report to the civil authorities?

A. I never was personally in command of the troops in the mountains. I directed always the service. I used, as a rule, the police power of the State for the purpose of emphasizing the

Commonwealth's authority, and personally did a great deal of service with the troops as to their duty; in other words, with the authority of the Governor, I went in person and said, "This is what the Governor will do."

Q. I will ask you if on several occasions, and without any report to the civil authorities, or to the persons who were supposed to be the civil authorities in Louisville, you did not act by the authority of the Governor, and not by the authority of the civil authorities of Louisville?

A. Yes, sir, but always first reported to the civil officers. For instance I reported to Judge Finley, and then went out into the country, and personally interviewed and persuaded certain persons to surrender—one Mr. Andrew Jackson. I tried to obey the law.

Q. Whenever the Governor was present did you ever report to anybody else?

A. The Governor was never present at any time when I had charge of the troops, except on the occasion I have mentioned.

Cross-examined by Mr. Sweeney.

Q. You came to Lebanon upon one occasion when you were Colonel of the Legion, with quite a number of soldiers under orders of the Governor?

A. Yes, sir, and am very much obliged to you for your courtesy and official help.

Q. You reported to the Circuit Judge of that district when you got there?

A. Yes, sir, Judge Patterson.

Q. I will ask you this: Whether or not you did not send guards, in obedience to the orders of the Governor with the prisoner, when the Circuit Judge had not issued such orders?

A. I know nothing about that, sir.

Q. You were not in active command yourself?

A. Yes, I was ordered to take command, but I put a subordinate in command, and I gave orders to him to go in person and he did so.

Q. You do not know it to be a fact that the officer in command of the troops, of which you had nominal command, if not an active command, sent guards with the prisoner without an order from the Circuit Judge, claiming that the Governor had ordered him to do so?

A. No, sir, you misunderstand it. The occasion you refer to was when Judge Thompson, and I forget whom else—Major Lyle, were appointed counsel for the prisoner by Judge Patterson, and I instructed the guard not to leave the prisoner, and not to let him be killed; and I had selected the guard, and they were men that did what they were told; and when Judge Thompson and Mr. Lyle went up to the place, which I understood was the grand jury room to consult with their client, and the guards went up with him, acting in obedience to the order which I had given,

Judge Thompson turned to Judge Patterson, and said that he did not have any guards following his client, and laughed about it. If Judge Patterson had ordered these guards back they would have gone back.

Q. While Governor Brown—ex-Governor Brown, was Governor of Kentucky you were then Colonel of the Louisville Legion were you not?

A. Yes, sir.

Q. I will ask you if upon that occasion, when it was charged that the Mayor of the city, and the other civil authorities of Louisville and the county of Jefferson, had gone into a combination, or whatever you see proper to call it, to permit a prize fight in the city of Louisville, and refused to execute the law, or to see that it was executed, in regard to stopping or preventing of that prize fight, if Governor Brown did not communicate with you, and you did not, regardless of the civil authorities in the city of Louisville and the county of Jefferson, take charge of the militia for the purpose of preventing a prize fight?

A. I have no recollection, and I would not like to state positively that Governor Brown did not communicate with me on that occasion, but I have not the slightest recollection of the occasion of his communicating with me. Governor Brown came to Louisville, I remember, and said that he was so determined to stop the fight—so illegal a proceeding, that he would order out the militia to stop it, if the police would not.

Q. If he had called on you would not you have acted under his order, regardless of the Mayor of the city of Louisville?

A. That is pretty hard to answer—circumstances under which a man would disobey orders.

Q. I will ask you by whose authority, and under whose order did you, as Colonel of the Louisville Legion, carry a prisoner to Lebanon, Ky., if it was not under the order of Gov. Bradley, and not under the order of the Circuit Judge of that district?

A. The order came to me from Gov. Bradley.

Q. You obeyed it?

A. Yes, sir.

Q. You know that the prisoner was taken there and tried and convicted, and brought back to the Penitentiary the same day?

A. Yes, sir

Q. You are fairly familiar with the city of Louisville are you not?

A. I am.

Q. If the regular police of the city of Louisville were scattered out all through the city at the various voting precincts, and a riot had have occurred in which some two or three thousand—or a large number of people, mad and angered, had gathered together, could the Chief of Police have gotten his force together in time to have suppressed a riot or mob of that kind?

A. It would be quite impossible to answer a question of that kind. I am not sufficiently familiar with the organization of the Police Department to know what he could do. They could have called them together very quickly.

Q. That would have left the precincts unprotected?

A. Unless he made other provisions. I am not familiar with the manner in which he undertook to handle his force.

Q. If the Mayor of the city of Louisville, the Sheriff of the county of Jefferson, the admitted Chairman of the Goebel Democratic Campaign Committee, the Jailer absent from his place, from the jail, and visiting at the various voting places in the city of Louisville, taking an active part in the campaign there, and all the city officers and county officers were combined together,—had entered into a conspiracy for the purpose of breaking up the election, or to take charge of the voting precincts, and to prevent the Inspectors from inspecting the counting of the vote, and the officers from duly certifying the returns; if such a state of case was true, as a matter of fact, don't you think the presence of the militia was necessary in the city of Louisville?

A. I can't imagine such a condition of things. I live in a better city than you think—a law-abiding community.

Q. I am putting a hypothetical case upon the theory that such a state of case existed; taking that to be true, then was not the militia necessary?

A. The presence of troops to guard property is always a duty. I can not imagine any condition which would make proper the presence of troops on the streets of any city on any election day, unless for the purpose of quelling an existing riot.

Q. How long, General, would it take to get the Louisville Legion together, in the case of a riot breaking out in the city of Louisville in its present condition, or the condition that existed on the 7th day of November, the regiment being newly organized?

A. I know nothing about the present organization. I will say that on the day of what is known as the Jennie Bowman riot, the Legion was under command in an hour.

Q. But yours was an oldregiment well organized?

A. Yes, sir.

Q. This was a new regiment?

A. I say I know nothing about the present organization.

Q. Do you know of a single voter that was intimidated, or prevented from getting to the polls to vote by reason of the rumor of the presence of the militia?

A. I was at only one precinct besides my own. I stayed with Mr. Helm at Precinct No. 9, and I then went to my own precinct to vote. It was the most quiet election I have ever seen.

Q. You saw no soldiers upon the street?

A. I saw individuals and some groups of men in uniform, but without arms. None under arms.

Q. Where did you see any of these groups?

A. In the vicinity of between my office and the Louisville hotel.

Q. That was when they were going to dinner?

A. I don't know where they were going.

Q. You saw no disorderly conduct on their part?

A. No, sir.

Q. A great many of your old soldiers who served under you in Puerto Rica are still wearing their uniforms?

A. They may be. I don't know any reason why they should not.

Re-examined by Mr. Kohn.

Q. You are acquainted with Mr. Henry Bell, the Sheriff and Mr. Haager, the Chief of Police, and Mr. Weaver, the Mayor?

A. Yes, sir.

Q. I will ask you if at any time you considered them incompetent and inefficient for the purpose of placing the militia under their jurisdictiou, or command, and subservient to their orders according to the statute, if demand was made of you?

A. I think they are entirely competent. I have given some military training to some of the Judges of the city.

Q. You have been asked a hypothetical question about a riot: nothing of that kind existed in the city of Louisville on the day of the election?

A. Nothing of the kind.

Re-cross-examined by Mr. Sweeney.

Q. None according to your personal knowledge?

A. That is what I mean.

Q. He asked you about Mayor Weaver, your Sheriff, Mr. Bell, and about Captain Haagar, they are nice gentlemen?

A. Yes, sir.

Q. They are very expert politicians, aren't they?

A. I don't know about that. I never raised any politicians.

Henry A. Bell, being first duly sworn, and examined by Mr. Phelps, deposes as follows:

Q. I believe you are over twenty-one years of age?

A. Yes, sir.

Q. Where is your home?

A. Jefferson county.

Q. Outside of the city?

A. Yes, sir.

Q. Do you at this time hold any official position in the city of Louisville?

A. I am Sheriff of Jefferson county.

Q. How long have you been Sheriff of Jefferson county?

A. Two years in January.

Q. What other office if any have you held in that county?

A. I was chief deputy in the County Clerk's office three years previous to my election as Sheriff, and I was Sheriff two terms before that.

Q. This is your third term as Sheriff?

A. Yes, sir, and I was a Deputy Sheriff before that.

Q. Are you pretty well acquainted with the county and city and the people that live in it?

A. Yes, sir, I think so.

Q. Were you the acting and qualified Sheriff on the day of the last November election?

A. Yes, sir.

Q. I will ask you whether as Sheriff, Gov. Bradley, or Col. Mengel offered to you the militia that was called out in Louisville, under your control?

A. No, sir, none of them offered to us at all.

Q. Do you know the location of the place they call the armory at this time?

A. Yes, sir, I know the location. I saw it.

Q. What portion of the city, I mean relative to the business part of the city, is it?

A. The wholesale business portion of the city; one of the largest business squares in the city.

Q. Have you seen that building since the election?

A. I came by there this morning.

Q. Has there been any change in the surroundings of the building since the election?

A. There was a sign for rent on it this morning.

Q. Were you at or about that building on the day before the election, or on the election day?

A. I heard that the soldiers had been called out Monday afternoon, and I went over to the door of the armory; they had a guard on the outside, and I think one on the inside, and I saw the Gatling gun about midway in the building.

Q. That was on Monday?

A. Yes, sir. I think I saw some soldiers Sunday afternoon. These men—I know a good many of them spoke to me. I know I saw a great many of them Monday afternoon.

Q. I will ask you whether it was known, and published by the papers of the city that the militia had been called for; and they had provided guns and ammunition, and Gatling guns were brought?

A. Yes, sir; I think the general notion was they were expected to take charge of the city.

Q. Were there any objections to that entered?

A. Yes, sir.

Q. On the election day I will ask you whether you called on the officer in charge at the armory, and if so, what transpired between you?

A. After the closing of the polls, I suppose about six o'clock, a newspaper reporter came in and said that he had heard that the troops had been ordered out. I was right there close to the armory, and I walked over to the place, and the soldiers spoke to me; I went on in and went back and met Col. Mengel and Col. Gray, and I told him I had heard that the soldiers were going to be called out, and I asked if any of the civil authorities had called upon him for them, and I told him I was there, and he knew himself it was very quiet, and I was afraid if he took the soldiers on the streets there would be trouble, and if there was trouble he would be responsible; and he says the troops have been ordered out. I says, in charge of any peace officer, and he says, yes, "the Governor." And that was all I said to him.

Q. What force of deputies did you have on the seventh of November?

A. I have about seventeen I think.

Q. Deputy Sheriffs?

A. Yes, sir.

Q. Was there any demand made on you by any person, or any citizen to have any extra Deputy Sheriffs for purposes of protection?

A. No, sir; there was some talk about it way back, but no mention was made of it at that time.

Q. Were you familiar with the status of affairs, and the sentiments and disposition of the people on election day in Louisville?

A. Yes, sir, I think so.

Q. I will ask you whether there was any existing state of affairs that made it necessary to have the militia?

A. None at all; there was less feeling about the election, except in a certain locality—certain classes of people. If you go on Fifth street where the politicians congregated you heard a good deal about it. However, the business men seemed to get the idea that there was going to be some trouble; but the masses of the people among them, there was very little feeling about it, and it was very hard to get an audience out at all.

Q. What effect, if any, did the calling of the militia together, and providing guns, bayonets, Gatling guns and ammunition, and the announcement of this publication through the public press have upon the people?

A. There are always a certain class of people who take very little interest in the election, and if they think there is going to be trouble they won't go; and they were afraid there would be a clash.

Q. It was a well defined and existing sentiment in the community?

A. It was. It was generally considered that the soldiers would be in charge of the city.

Q. Was it known in whose charge the soldiers would be?

A. Charge of the Governor.

Q. Was it known to what political party he belonged?

A. He was making speeches at that time; he made a speech to the negroes at Thirteenth and Walnut; he had made two or three speeches. I know of the one at Thirteenth and Walnut.

Q. Was he speaking in behalf of any particular party?

A. In behalf of his own party; the Republican party.

Q. Have you heard the question about supposing a case where the Sheriff and the Mayor and the Jailer of the city, and all the city and county officials were in a conspiracy to debauch the ballot and defeat the will of the people: I will ask you whether anything of the kind had any existence in fact, directly or indirectly, in the city of Louisville?

A. None in the world.

Q. I will ask you whether to your knowledge there was any purpose or intent on the part of yourself, or any of the officials to interfere with the free and fair expression of the people on election day?

A. There was not. On the other hand we were more than anxious to have a quiet election.

Q. It has been stated that you were a member of some committee. What committee were you connected with?

A. I was Chairman of the Democratic Committee.

Q. Did that interfere in any way with the exercise of your duties?

A. It did not. The duties I had to perform show for themselves. They were performed in a satisfactory manner.

Q. Whose officers were they that actually served these injunctions that created the trouble in Louisville?

A. My deputies served all they were requested to serve except on the Mayor and they could not find him. He had eight of them.

Q. Do you know whether the people of Louisville, especially the opponents to the Democratic ticket, knew what was your intention with reference to the election day,—the conduct of affairs?

A. I think so.

Q. Did you make any public announcement to them on that subject?

A. I told them whatever was my duty was, I would do irrespective of my feelings.

Q. How did you notify the people of that?

A. At a meeting of the Board of Trade.

Q. Was it published to the world?

A. I think so.

Q. Do you know and can you give this Commission the facts as to the number of registered votes in Louisville at the last election; the number cast by each party, and the number not cast by each party?

Objected to because it is a matter of record, and the record is the best evidence, which objection was overruled, to which contestee objected and excepted.

A. They may vary just a few, but the registered vote was 42,042, and the vote cast was 32,236. It may vary a few.

Q. How much does that lack of being the total registered vote?

A. 8,806 votes not cast; in the county they may vary a little.

Q. Can you tell how many of those not voting belonged to the Democratic party, and how many to any other party?

A. The Democratic registration was in round numbers about 22,000, and the Democratic vote was 13,400, leaving a difference of 8,600 that did not vote.

Q. What was the total difference between the registered vote and the vote cast?

A. 9,800.

Q. And the falling off of the Democratic vote was 8,600?

A. Yes, sir.

Q. What was the total Republican registered vote?

A. It is near about 13,700; may vary a little.

Q. What was the total vote cast for the Republican ticket?

A. My figures show about 16,555.

Q. A registration of 13,000 and a vote of 16,000?

A. Yes, sir, just in the city; does not include the county.

Q. Mr. Bell, are you familiar with, and can you tell the gentlemen of the Commission what the usual percentage of falling off between the registered vote and the vote actually cast?

A. I don't think, gentlemen, over 10 per cent.; maybe may vary a little over that.

Q. I will ask you whether the falling off in the vote this time was larger or smaller than usual?

A. Larger.

Q. Was it much or little larger?

A. Considerably larger.

Q. About what proportion—how many times larger than the usual falling off?

A. I don't know; I don't remember exactly the registered vote in 1897, or the vote cast exactly, but there were over 40,000 votes cast then; I think the registered vote was 43,000 or 44,000.

Q. Then would I be justified in saying about three times as large as usual?

A. I think so.

Cross-examined by Mr. Sweeney.

Q. Mr. Bell, the dissension in the Democratic party this time in the city of Louisville was greater than you have ever known it before?

A. Not greater than the McKinley and Bryan race.

Q. Do you know how many votes Mr. Buckner received?

A. No sir, I do not, but the Democratic vote was larger. The Democratic ticket received more votes then than in a long time.

Q. I am speaking of the dissension in the Democratic party?

A. There were more people then that voted for McKinley; and the Palmer and Buckner men voted for McKinley, than for Mr. Taylor.

Q. How many Brown men do you think voted for Mr. Taylor this last time?

A. I think all the leaders of the Brown party voted for Taylor. That was the purpose with which Gov. Brown was run; the leaders intended their work for Mr. Taylor.

Q. Now I will ask you if you know anything about a lot of ballot boxes that were stolen out of Republican precincts on the night previous to the election, or about that time?

A. I heard there were one or two of them removed. Mr. Jim Helm asked me to let one of my deputies go with him so he could examine every precinct. I think the men whoever delivered them had left two or three boxes at different precincts, and he run them all down except in one precinct, and he said he would report to the people that everything was all right.

Q. That was after you had found the boxes?

A. No, sir; I had made arrangement with Mr. Jim Helm that he was to go at noon of that day, and I was to furnish a deputy, and look at all the places where he thought something might happen, and he went out and straightened out everything, as I understood.

Q. I will ask you if it is not a fact that every ballot box that was taken were not out of Republican precincts?

A. I don't know which one was taken. My recollection is that but in few precincts were the boxes not delivered at the booths. I have nothing to do with that; one booth to 100 voters.

Q. I will ask you if you did not state to Mr. Jim Helm in the city of Louisville, when he asked you if you had delivered the ballot boxes to the voting places, and stated that the ballot boxes had been stolen out of these Republican precincts, if you did not say you did not deliver two because you were not asked?

A. Helm was joking me. He said there was no money to be used on his side, and he said I find that some of your Louisville friends seem to think you are not going to do your duty, and I want you to furnish me a deputy and let me go with him and go to the booths and see that they are there, and had not been taken out of the booths.

Q. Do you know anything about these boxes being removed from the various precincts in the city?

A. No, sir. I had nothing to do with them after they were delivered.

Q. You said something about the falling off of the registered vote in the city of Louisville. As a matter or fact was not the

greatest falling off of the vote as compared with the registration, in Republican precincts?

A. No, sir, I think not. But I did not make a special examination as to that. Because the Republicans were all out and voting. The Republicans expected to have the troops; they were all out.

Q. Were there any persons in Louisville that were for Mr. Goebel, any Democrats, outside of the Sheriffs and Jailers and policemen and the Fire Department?

A. There were nearly 14,000 votes, and I have seventeen deputies I think, and I expect the others have 340 or 350. In the county we carried a great many precincts, and got over 1600 votes.

Q. What was the falling off of the Republican vote as compared with the McKinley vote?

A. The McKinley vote was an unusual vote. Very little effort was made on the Democratic side at that time, and it was said all the officers of election were McKinley men and the Brown Democrats, and he received a very large vote. There was no effort made to watch the colored vote, and there were a good many repeaters among them, and a good many business men voted for McKinley.

Q. The Courier-Journal had its own way that time?

A. I don't know about that.

Q. Was not the falling off about 10,000 votes?

A. Yes, sir, about.

Q. You are fairly well acquainted with the citizens of Louisville, are you not?

A. Yes, sir.

Q. Don't you know of your own personal knowledge of a great many of your friends, even of men that you know, of reputation and standing in the city of Louisville who are Democrats, and who registered as Democrats, and who openly upon the streets and in private conversation, and publicly proclaimed that they would not support Mr. Goebel, and they did not vote for him?

A. I think you are mistaken about that. In the last Presidential election most of the men that voted for McKinley that were formerly registered as Democrats, registered then as Democrats, but they are getting so now most of them register as Republicans; and there was about 200 votes for Brown. O, a good many of these people registered as Democrats, but they are getting so they are registering as Republicans; most of those people who are going to turn Republican are registering as Republicans.

Q. I will ask you if the Republican vote did not fall off a little over 5,000 votes from what was cast in the race for Clerk of the Court of Appeals, when Shackleford ran?

A. I don't remember what that vote was. But it is a great deal larger than the Evans vote. Evans only received 11,720; and it was increased nearly 5,000 over the Evans vote. The Shackleford vote was so far back; but the Shackleford vote was

during the Mayor's race, and in the Mayor's race Weaver received over 21,000 votes, and Mr. Todd over 18,000 votes; that was an unusually large vote; the largest vote polled in Louisville; every effort was made on both sides to get the full vote; and that was the way it came that Mr. Shackleford got such a vote, because he was carried along with the city election.

Q. What was the difference between his vote and the vote this time?

A. Mr. Shackleford fell behind Mr. Weaver,—I didn't put down those figures. I just put down the highest vote.

Q. What is that,—the difference between the Todd vote?

A. Todd got 18,000 votes, and the falling off of the Democratic race from that time was much larger; the falling off of the Democratic vote was nearly 10,000 votes,—no, about 8,000.

Q. You have stated that the people of Louisville were taking so little interest in that election, that it was hard to get the people out to hear political speaking. I will ask you if Governor Bradley—now ex-Governor—when he spoke at the Auditorium, did not have an immense crowd—the Auditorium crowded?

A. The Auditorium would hold about 3,000 people; and that is small in proportion to the number of people in the city; and they furnished street car tickets to the voters, and drummed them up.

Q. When he spoke at Music Hall, was not Music hall crowded?

A. Yes, sir, it was so reported.

Q. When ex-Senator Bronston spoke at the Auditorium, was not the Auditorium crowded and thousands turned away?

A. No, sir, not thousands turned away. They have clubs all over town, and they get these fellows in line, and give the negroes street car tickets.

Q. When Senator Bronston spoke at the Auditorium was not there three or four speeches made on the outside, overflow speeches, made by three or four speakers?

A. Yes, sir. The reason that Bronston could get such a crowd he has become pretty notorious in Kentucky, and they wanted to hear him—men irrespective of party went to hear him.

Q. You say a great many men who registered as Democrats did not vote against Mr. Bryan. Do you know Mr. J. B. Wathen, of the city of Louisville?

A. Yes, sir.

Q. And his family?

A. Yes, sir.

Q. They are Democrats?

A. Yes, sir. I known one of the Wathens, and from his associations, I suppose he voted against Mr. Goebel, but whether he voted for Taylor or Brown I don't know.

Q. Did not the whole family vote against him?

A. They may have.

Q. Do you know Mr. John?

A. Yes, sir, he was on the Brown ticket.

Q. Registered as a Brown Democrat?

A. There were 6,000 men registered as Independent. He may have registered as a Democrat and voted for Brown.

Q. Do you know Major Sanders?

A. Yes, sir.

Q. Major Calloway?

A. Yes, sir.

Q. Did these gentlemen support Mr. Goebel?

A. I think not.

Q. Do you know Mr. Asa Willis?

A. Yes, sir.

Q. Did he support Mr. Goebel?

A. No, sir.

Q. You have heard of John Whallen?

A. Yes, sir; he occupied the same position four years ago that he did this time. Mr. Whallen bolted the Democratic ticket two years ago in the Congressional race.

Q. The records show that these gentlemen are registered as Democrats?

A. I don't know whether he claims his home in the town or the city.

Q. Do you know Mr. Dank, a citizen of Louisville, formerly of Lebanon?

A. I can't place him.

Q. He is registered as a Democrat?

A. I don't know. Be very hard for me to tell. I haven't examined the registration books.

Q. Do you know Mr. Jack Able?

A. No, sir.

Q. He is registered as a Democrat?

A. I don't know.

Q. Did he support Mr. Goebel?

A. I don't know.

Re-examined by Mr. Phelps.

Q. You were asked whether Gov. Bradley did not succeed in drawing together two or three thousand people at the Auditorium? Did you attend the speaking which Mr. Bryan at in Louisville at the race track?

A. Yes, sir.

Q. Can you tell about how many people attended that?

A. I suppose eight or ten thousand.

Q. You have been speaking here of a good many Democrats who were registered as Democrats who voted for the Republican ticket; I will ask you if there were not a number of Republicans in the city of Louisville, Germans, who voted for Mr. Goebel?

A. Yes, sir.

Q. And despite that fact the Democratic falling off was about 9,000 votes?

A. Yes, sir.

Q. You started to say something about the Republicans having protection at the polls—will you tell what you meant by that?

A. They were relying on the militia to protect them if anything came up.

Re-cross-examined by Mr. Sweeney.

Q. You say that Mr. Bryan had a large crowd at the speaking which he had: What did you mean by saying that the people were so indifferent that it was hard to get a crowd out?

A. Bryan always drew a crowd anywhere he went.

Q. Was that Bryan, whiskey or burgoo?

A. All three.

Q. You are familiar, I presume, with the State: I will ask you if Mr. Bryan spoke in a single place that the Democratic vote did not fall off in large numbers?

A. No sir, I don't know anything about that.

R. Lee Suter, being first duly sworn, and examined by Mr. Phelps, deposes as follows:

Q. Where do you live?

A. No. 1610 Second Street, Louisville, Ky.

Q. How long have you lived there?

A. Twenty years.

Q. What official position do you hold in Lousville?

A. A member of the Board of Public Safety.

Q. Were you in the city of Louisville on election day on November 7, 1899?

A. Yes, sir.

Q. Were you in the city for a month or two months prior to that election?

A. Yes, sir.

Q. I will ask you to state in your own way, in the first place as to whether there was any reason or necessity for having the militia in the city of Louisville on election day?

A. Absolutely none.

Q. I will ask you if there were any threats of the militia—any organized effort through the press or otherwise, to cause fear on the part of the Democrats because of the militia. Just state all you know upon the subject?

A. There were three papers published in Louisville, The Post, the Louisville Dispatch, and the Commercial that contained inflammatory articles every day for possibly two months before the election, threatening all sorts of bloodshed and everything else.

Q. I will ask you if on the Saturday night before the election there was a speaking at Music Hall, at which Mr. Geo. Denny and Gov. Bradley spoke?

A. Yes, sir; they both spoke there; so the papers say; I did not hear them.

Q. I will ask you whether you can furnish the substance of the threats that were made there as given in the newspapers the next day? (Objected to.)

Q. Have you a newspaper that show?

A. I have one containing an extract from Mr. Denny's speech.

Q. Just read that article?

A. From the Courier-Journal of November 5th. "Mr. Denny began his speech by saying that if there was not a fair election, and an honest count there would be a fight. He said that an effort was being made to rob the people of the great State of Kentucky of their suffrage. The Democrats, headed by Goebel, are going to commit a crime that is worse than stealing your pocket book or your property. Will you stand it? I want you to go to the polls and stay there. I want you to go into those booths and tell the election officers that you are going to have a fair count or know the reason why. Do you remember what followed some years ago in Chicago when one party tried to rob the other of its rightful vote? The election officers were shot to death and four others were thrown into the lake to drown. And there hasn't been a steal there since.

"Talk is cheap. The time for talk has passed and the time for action has come. If we can not cast our votes and have them counted, then I say revolution. I was born in Kentucky. My father, my grandfather and my great grandfather were born on Kentucky soil, and their ashes rest here to-day. They were men who loved liberty and independence and men who were brave and true. They imparted to me the same love of liberty and independence and the spirit of the words rung out by the old liberty bell in Philadelphia is still alive in my breast. I am no carpet-bagger, and by the grace of God, I shall exercise the inalienable right which I possess and will see to it that my vote is rightly counted.

"Patrick Henry said, 'Give me liberty or give me death,' and I say these same words to you to-night. I would rather die than to let any man rob me of my vote. A time comes to every man to die, and I am willing to accept death now rather than to submit to an open robbery of my elective franchise.

"Kentuckians have ever been brave and true. They knew what to do when they encountered the Indian on the dark and bloody ground; they knew what to do at New Orleans when they pressed the battle under the leadership of Jackson and drove the enemy back; they knew what to do in the Civil War; they knew what to do on San Juan hill under the terrific and deadly fire of the Spaniards; and I tell you they will know what to do at the polls next Tuesday.

"Will you stand by us if we do what you say?" came a voice from the audience.

"Yes, I will stand by you," thundered Denny. "I am not the kind of a man to say, 'Go on, boys,' but I'll say, 'Come on, boys, and follow me.' I want to tell you now that we must do our whole duty to the Commonwealth, and wade through blood knee-deep, if necessary, in order to perpetuate its place among the States of the Union."

Q. Also read the speech of Governor Bradley delivered at the same time?

A. Yes, sir. It seems that Governor Bradley delivered his speech to the colored population.

"Governor Bradley began his speech amid long applause. "I came here," said the Governor, "because I feel that I am discharging my rightful duty in this campaign."

"In the start Governor Bradley made a plea for harmony among the local Republicans. He did it in a suave way, however, but the crowd knew what he meant and several voices cried out that was already harmony.

"I want you to elect the State Republican ticket," said he. "I also want you in Louisville to see that your city ticket is elected; that your Representatives for the Legislature are elected, and that your Senator is elected."

Q. Who was the Republican candidate for Senator?

A. I don't know who it was. I have heard that Governor Bradley was a candidate and Mr. St. John Boyle in Louisville.

"Now, my colored friends, I want to tell you a few things. The shackles were melted from your arms in the heat of battle, and your title of freedom was written with the gleaming sword. Do you want to be put back into slavery again? Not to work for a master, but to be robbed of your right to vote. And while you are being robbed we white folks are being robbed. We got your liberty for you. Now I want to know if you are going to maintain it and at the same time help us to maintain ours? If you have any idea of selling your vote wait until some other election to do it."

Governor Bradley then made an attack upon Mr. Goebel and denounced the election law. He said that if the Republicans were defeated, he would know that he had done his whole duty in trying to uphold the State of Kentucky and her institutions.

"I wish to God I were made of iron," declared the Governor. "I would like to make 1,000 speeches a day for the Republican State ticket, and I would like to ride on the lightning instead of railroad trains in order to make them."

Q. Now, Mr. Suter, I will ask you whether it was not published—publicly announced in the public press—that a Gatling gun was on hand and that the militia would be called out under the supervision and control of ex-Governor Bradley, then Governor Bradley?

A. My knowledge of that was gathered entirely from the newspapers. I read the next morning in the papers that he had sent a substitute in the person of Mr. Gus Willson, who either made a statement or read a letter that Governor Bradley could not be there, because he was preparing to take charge of the militia the next day. The same paper also contained a statement that the militia would be called, and a Gatling gun would be brought there with thirty thousand rounds of ammunition.

Q. I will ask you if there existed in fact any necessity for the militia in Louisville, or that kind of preparation in the city of Louisville?

A. Not any more than to-night.

Q. I will ask you whether or not it was generally known upon which side, under whose command the militia was to be, and in whose interest those threats were being made?

A. Everything seemed to be with them—with the Republicans because they were in charge of the officers who all seemed to be Republicans. No Democrats, so far as I know, were taken into the conference, and no peace officer.

Q. The question has been asked whether there was a conspiracy or combination between the members of the Board of Public Safety, and the Mayor and police and the Sheriff and the Jailer, and the city officials, done for the purpose of doiug something wrong upon election day, or prevent votes being cast or interfering with them: Was there anything of that sort?

A. Absolutely nothing of the kind.

Q. I will ask you whether or not on the contrary every assurance was not given that every effort would be made to have a fair election and preserve the peace?

A. Yes, sir, the Mayor and the Board of Public Safety and the Sheriff, Mr. Bell, were all invited to what was said to be to consider the next election, in which the Mayor and each member of the Board of Safety assured the gentlemen that there was not going to be any trouble on the day of the election in Louisville, and no cause for alarm, and that every member of the Board of Safety and each peace officer intended to be there and to aid in keeping the peace, and see that everything was all right.

Q. Was that done?

A. Yes, sir.

Q. Is it true that the whole police force was for Mr. Goebel?

A. I understood that John Whallen, who was a kind of henchman for Yaulor and Brown, said that he owned half of the police force, and they needed him more than they did the city authorities.

Contestee moved to strike out the last answer——

Q. Mr. Suter, I will ask you whether there was any sort of riot, or danger of a mob, or bloodshed by reason of any act of the civil authorities of Louisville, or from any other cause on election day?

A. There was not.

Q. Any sort of justification for the parading of the militia on the streets, and having a Gatling gun at the armory?

A. There was none in the world.

Q. Did you pass by the armory on election day?

A. I did.

Q. I will ask you whether the militia or the ammunition, or any part of the equipment could be seen from the street, as you pass by?

A. I saw the soldiers in there walking up and down. Looked like men on guard duty, with guns in their arms, and on the inside of the armory, looked like it might be forty or fifty feet back, I saw a cannon, or a Gatling gun. I went down to see it soon after the papers stated it had come, but I could not see it to know what it was then.

Q. And you did see it in there?

A. Yes, sir.

Q. I will ask you whether it was on a public street, as to how public it was as compared to other streets of Louisville?

A. Main street. It is the main business street.

Q. Wholesale district of the city?

A. Yes, sir.

Q. Also in the neighborhood of the Louisville Hotel and the Union Depot?

A. Right across the street from the Louisville Hotel or a little below it, and within a block of the Union Depot.

Q. I will ask you whether or not there were not officials in the city of Louisville opposed to the Democratic interests that had combined to do all they could against the Democratic ticket, and if so what they were composed of?

A. Collector Sapp, Revenue Collector, had all his force at work. Postmaster Baker had all his force at work. Every Republican official in the city that I know of were at work for the Republican ticket.

Q. In numbers how do their forces compare with the city administration?

A. Nearly as large if not larger.

Q. I will ask you whether you knew of the charge which the Federal Judge gave to the grand jury, and the fruits of Federal interference prior to this election?

A. Yes, sir; I never heard Judge Evans deliver his charge, but I saw the statement in the paper, that he had adjourned his grand jury over and instructed them, to take charge of the election matters.

Q. Was there any Federal officer to be elected in November, 1899?

A. None that I know of.

Q. At any time during your whole residence in the city of Louisville, did you ever before know of a Federal Judge instructing or charging his grand jury relative to a State election at which only State officers were to be elected?

A. I never heard of a Judge assuming any such authority as that.

Q. I will ask you whether or not you ever knew, or heard before, of Federal Marshals, within the last ten years, interfering in a State election?

A. Not in a State election—no, sir.

Q. I will ask you whether or not on election day there were arrests made of officers of elections by Federal authority, by Federal Marshals?

A. I don't know that, Mr. Kohn, except—

Q. Do you know of Mr. Croxton's arrest?

A. I know of some twenty-one or twenty-two that have been arrested by the Federal authorities, because I have been employed to defend them, and in that way I know it, but I didn't see them arrested.

Q. Now I will ask you whether or not there were Brown Inspectors forced into the voting places—booths of the city of Louisville, to witness and inspect the count, and if so, by what process?

A. They were forced in there by the police.

Q. Under whose directions and order?

A. By the State militia, who, at that time——

Q. Under what orders?

A. Under the order of the Board of Public Safety, and in obedience——

Q. (By Gov. Bradley.) Do you say any Inspector was forced in there by the militia?

A. The militia, as I understand it, called at the precincts; I was informed of this by the police, who reported back——

Objected to.

A. I know it officially, because these officers reported to me officially.

Q. (Mr. Kohn resumes.) Was any paper served on you on election day?

A. Yes, sir.

Q. What time was that?

A. Judge Toney issued an injunction against the Mayor, the Board of Public Safety, and the Chief of Police, I think about three o'clock in the afternoon; he had issued two injunctions, but neither of them were served on me that day. I went, however, to the City Hall, and went into a meeting of the Board of Safety, and they informed me that they had been served with this order of injunction, and I acted under it without having been served until the next day.

Q. Now, by what authority were the police instructed to go and permit, or to force an entrance for these Brown Inspectors?

A. They were instructed to do so by the Board of Safety.

Q. Why did the Board of Safety make an order?

A. Because we were commanded to do so by Judge Toney.

Q. Now, I will ask you, Mr. Suter, to state to this Commission what the effect was upon the voters of the city of Louisville of this threatened militia, and the militia being in the city, and upon the streets of the city on election day; the threatened Federal interference, the threats made of bloodshed and violence upon election day; and the action of Judge Toney enforcing these election officers?

A. Well, it had a very depressing effect upon the people. I thought, feeling as I did, that martial law had been declared. I didn't know what was going to happen next.

Q. Was there any special portion of the population of Louisville interfered with especially, or apprehensive to a degree?

A. Well, I think the German population, possibly, felt the fear more than any other.

Cross-examined by Col. Breckinridge.

Q. What is your profession?

A. I am a lawyer.

Q. And how long have you practiced law?

A. About nine years or a little over.

Q. And what is your official position?

A. Member of the Board of Public Safety of the city of Louisville.

Q. How long have you been a member?

A. I have been a member of the Board of Safety for two years.

Q. Did you hold any official position before that?

A. No, sir. Well, I was a Commissioner of one of the lunatic asylums. I never considered that as a position.

Q. What was your relation to the lunatic asylum?

A. I was a Commissioner.

Q. Were you a member of the Board of Safety that prepared and published certain instructions to the Police and Fire Department?

A. I was.

Q. Did you vote for those resolutions?

A. I did.

Q. Did you vote for the resolutions that were voted for by Mr. Lyons and Mr. Tierney, concerning the election?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. There was no discrepancy—no difference during that election, or preparatory to it, between Mr. Lyons and Mr. Tierney on one side, and you on the other?

A. No, sir; there was a discrepancy between Mr. Lyons and myself on one side, and Mr. Tierney on the other, as to the rules governing the Fire Department.

Q. What was that?

A. Well, Mr. Tierney wanted to prevent the firemen from leaving their engine houses on that day; now, the Fire Department—there are certain days of the month that the men have an off day, what is called an off day; they are permitted to lay off that day and receive their pay for it. On the day of the election the off day occurred, and I think about twenty odd were permitted to lay off that day as usual. Mr. Lyons and I instructed the firemen, as had always been the rule, that to the extent of thirty-one, where we had substitutes who are regular firemen—they are regularly sworn in by the Board—to the extent of thirty-one on any occasion the firemen can leave their department and put in their place a regular substitute. Now, on this day, making the off day, and the day that they could have substitutes if they so desired, Mr. Tierney wanted to deny them their right, and Mr. Lyons and myself refused to do it.

Q. Isn't it true that on that day more of the firemen were absent than by the rules, the ordinary rules of the Department, and your Board of Safety, ought to have been absent?

A. No, sir.

Q. And left substitutes in their places?

A. No, sir; it is not true.

Q. Isn't it true that the purpose that Mr. Tierney had was to prevent the Fire Department from interfering with the election, and that the purpose that you had in voting against that was to give the firemen an opportunity to interfere?

A. The purpose Mr. Tierney had, according to his expressions in the Board was, that he was for Mr. Taylor or Mr. Brown, one or the other, for Governor, and he wanted to take away the rights from the firemen that they had for twenty-five years, to go to the polls on that day.

Q. He so stated, did he?

A. Yes, sir; he stated his object.

Q. And it was to prevent the firemen from voting for Mr. Taylor because he was for Mr. Taylor?

A. Or Brown. He didn't care for them to have anything to do with the election. He didn't vote that way—Col. Breckinridge, let me inform you he didn't vote that way upon any other occasion since I have served with him on the Board. We have had many similar cases, and Mr. Tierney always voted just as I was voting, up to this time.

Q. Do I understand you to say that that was Mr. Tierney's own statement, that he stated that his purpose in making this vote was, that being for Brown or Taylor, he wanted to prevent the firemen from exercising their privilege of voting?

A. He stated it about this way; he wanted to take all the political advantage he could. I asked him if that wasn't his object, and he didn't deny it, that he wanted to take all the political advantage he could.

Q. Did you not say to the Board just a minute ago that Mr. Tierney stated that his purpose was, being against Mr. Goebel, to prevent the firemen from going to the polls to exercise their right of voting?

A. Oh, Mr. Tierney was openly against Mr. Goebel.

Q. That is not the question I asked; read the question, so that we need not have any misunderstanding as to your statement?

A. I heard your question.

Q. Will you answer it then?

A. And Mr. Tierney—I could not repeat his exact words, but in substance—more than a dozen times said exactly what I have told you.

Q. I will ask you, Mr. Suter, whether you were not a very active politician during the entire canvass for Mr. Goebel?

A. Yes, sir; I was quite active. I was for him very sincerely.

Q. I will ask you whether Mr. Lyons was not?

A. While Mr. Lyons was for Mr. Goebel, I think he wasn't active.

Q. And the Mayor was also?

A. Well, he was very active for him, but neither of them were as active as I was.

Q. And the Chief of Police?

A. The Chief of Police didn't show any activity at all.

Q. He was for Mr. Goebel?

A. I presume he was.

Q. And the Sheriff?

A. The Sheriff was for Goebel—yes, sir.

Q. Who selected the extra police that the Board of Safety appointed?

A. The extra police were selected by Mr. Harry Weaver and Mr. John S. Morris, and through the outside avenues such as they had—such as candidates, and people interested in the election.

Q. Who is Mr. Harry Weaver?

A. He was the City Buyer.

Q. A son of Mr. Charles Weaver, or brother?

A. No, sir; a brother.

Q. Who is Mr. John S. Morris?

A. He is Secretary of the Fire Department.

Q. Also a member of the City Government?

A. Yes, sir.

Q. And these policemen, do I understand you to say, were selected by these gentlemen nominally, but in reality by the candidates for office, and their friends, who gave the names to them?

A. Yes, sir; we told them we wanted a number of extra police, to go out and select good men, and they reported back.

Q. Was there, as far as you know, a single member of this extra police force that was not for Mr. Goebel?

A. So far as I know there was not a single member for him.

Q. Sir?

A. So far as I know there was not a single member for him.

Q. Do you mean to say to the jury that neither you nor Mr. Lyons had no information whatever as to the politics of this extra force?

A. Absolutely none. I had never talked to any of them about their politics, neither did Mr. Lyons, so far as I know.

Q. And that you had no knowledge as to whether Mr. Harry Weaver and Mr. John S. Morris, obtaining the names of these extra police from the candidates, have no knowledge of the politics of the policemen?

A. So far as I was concerned I had no knowledge, but I do not presume that Mr. Weaver would go out and select Republicans to operate for a Democratic administration.

Q. Did you, at that time, have any belief that any of them were connected with any party except the Goebel Democracy?

A. I didn't go into details on that; I never saw any of them until the morning of the election.

Q. I didn't ask you if you went into any details; I asked you as to your own state of mind, whether at that time you had any belief that any of these extra policemen were anything but supporters of Mr. Goebel?

A. I didn't know that.

Q. And at that time you had no belief about it, whether they were, or were not Democrats?

A. I believed that they were for Mr. Goebel.

Q. You believed that they were for Mr. Goebel?

A. I did—yes, sir; but I didn't know it, because I didn't ask them.

Q. And you would have selected them if you hadn't so believed, Mr. Suter?

A. Well, if I had, then I ought to be, as you gave an intimation awhile ago, in the asylum.

Q. I didn't say that; I beg your pardon.

A. You gave a slight reference, you know.

Q. No, I did not. But your judgment is, being a public officer, and an officer of the city charged, as a member of the Board of Safety, with the safety of the city, that you would judge yourself to be a lunatic if you selected a policeman to keep order in the city of Louisville, any of whom were not Goebel Democrats?

Q. I didn't say that.

Q. That is exactly what you said, is it not?

A. No, sir; I said if I were to go out and select that many Republicans to serve a Democratic administration, that I ought to be put in an asylum.

Q. Were those policemen then, Mr. Suter, selected by you to serve a Democratic administration, or to keep the peace for the city?

A. They were to keep the peace for the city, exactly what they did.

Q. Then you are mistaken, are you not—

A. And for that reason I went to Democrats, because I knew they would do it, and I had very serious doubts of the Republicans doing it, based on the action of the leaders of the Republican party for several months previous to that time.

Q. Your judgment as a Democrat was, that it would be a matter of lunacy to put the safety of the city in the hands of anybody but Democrats—Goebel Democrats?

A. There are but one kind of Democrats.

Q. Is it a part of your official duty to decide what is Democracy, and who are Democrats; is that part of your position?

A. I say to you I do it, very effectively, every time I appoint a man to office.

Q. Whether he is a policeman to keep the peace of the city, or anything else?

A. In selecting the special police, who were only going to be used for a day, the Metropolitan Police Regulations were not lived up to, because that requires a policeman to have qualifications of a certain character; he has to be examined by a physician; he has to make application and state the ward in which he lives; his application has to be signed by two citizens of his ward; he has to be appointed; he has to execute a bond; and he has to be sworn in. Now the statute in the case of special police only requires that they be appointed and sworn in.

Q. So that all the limitation upon the discretion of the Board of Public Safety, and all safeguards that the law throws around the appointment of the police, did not apply when you and your colleague came to select the 275 police for the day of election, and only your discretion as a politician and official were the safeguards of the city?

A. We selected only about 240 special policemen; they were good men, so far as I knew, and so far as I thought, were all Democrats, and I thought the city was safe in the hands of such men.

Q. And that is your answer to the question that I put to you, is it?

A. Yes, sir.

Q. It is true, however, whether you answer that question or not—it is true that you so appointed them that all the safeguards that the Legislature has thought fit to enact into the Metropolitan Police Act, did not apply when you came to select and appoint those 200 and odd policemen?

A. I will answer that by stating—

Q. Isn't that true?

A. Just let me answer the question, then if you don't like it you can object to it.

Q. My judgment is, that I am entitled to an answer to my question.

A. My judgment is, that I am entitled to answer it as I see proper, and then if it is not right let the Committee say so.

Q. It is true, however, whether you answer that question or not—it is true that you so appointed them that all the safeguards that the Legislature has thought fit to enact into the Metropolitan Police Act did not apply when you came to select and appoint those two hundred and odd policemen?

A. My answer to that is, that the Board of Public Safety complied with the spirit and the letter of the Special Police Law in this appointment—in making these appointments—and that the Metropolitan Police Bill had nothing in the world to do with it; they were appointed under a separate statute.

Q. I will repeat the question; isn't it true that every requirement in the Metropolitan Police Act concerning the selection of policemen was disregarded in your selection of the two hundred and odd police?

A. There were 290 patrolmen on the police force of Louisville, each and everyone of whom were appointed under the Metropolitan Police Law, and in each and every appointment the Board complied in the very strictest manner with the Metropolitan Police Law. Under the Special Law, which is an entirely different law, they were not required to do it, and didn't do it, and didn't have the time to do it if they had wanted to.

Q. You did think that it was necessary in that emergency to appoint, you say, 240 extra police, did you?

A. I never thought it was necessary to do it—no, sir. I thought the police force was amply sufficient, but as I stated, these newspapers had been flashed all over the city for days and months beforehand, with inflammatory articles, that there was going to be bloodshed and riot; the Mayor and the Board of Public Safety had a meeting to discuss the situation, we knew that there would be no trouble upon that day, but in order to allay the feelings of the citizens, or timid people, and to assure them that there was nothing in these reports, except the actions of the scuttlefish that muddies the water to do his own dirty work, the Mayor issued a proclamation assuring the public that the police force was amply sufficient, and that the law would be complied with; and to that end, in addition to the regular force, we appointed about 240 special police.

Q. Are you through?

A. Yes, sir.

Q. Mr. Suter, who were the candidates that were kind enough to volunteer recommendations for those police to this special police force?

A. I could not tell you to save my life, sir. I don't know, of my own knowledge.

Q. Did you, as the person who is charged by law with the safety of the city, take any pains to ascertain who recommended these extra police, and how Mr. Harry Weaver and Mr. John S. Morris got their names?

A. Well, Colonel, I think I can extricate you from your difficulty in that respect. The police——

Q. I am in no difficulty; if you will just recollect you are a witness——

A. Yes, sir; I want to enlighten you on the very point you ask about. The special police were brought into a room, possibly as large as this, and each and every man was asked certain questions. They were asked in bodies of about forty or fifty. Genl. Castleman was present when those questions were asked, and the Board of Safety, and the Mayor. They answered the questions satisfactorily. There were no criminals among them, they stated, and nobody there that had been indicted. There was nobody there under indictment. Then the instructions were delivered by the Mayor, and after these gentlemen answered that they could comply with those requirements, the oath of office was administered; then they were turned over to the Chief of Police, who divided them up into squads of about fifty, and deposited them in the various station houses of the city.

Q. Now, Mr. Suter, I did not ask you a word about what the Chief of Police did; I did not ask you a word about what happened there. I asked you whether you, as a member of the Board of Safety, took any steps to ascertain by whom these persons were recommended, and how they were selected, and I think you can understand that question and answer it?

A. Yes, sir; I can. Mr. John S. Morris and Mr. Harry Weaver, as I told you, were informed by us that we had decided to put on about 240 or 250, I think, or maybe 275 police, but only 240 reported. We asked them if they could get together that many men. They said that through the Democratic clubs of the city and the candidates, that they could do it, and they reported back upon the next day with these gentlemen.

Q. Will you say to this Commission, why it was, when you were asked a little while ago about how these persons were selected, you failed to answer that one of the means employed was the Democratic clubs of the city?

A. Well, I didn't think of it at the time, but that is a fact nevertheless.

Q. There is no doubt about that fact, is there, that the Democratic clubs participated in the recommendation and selection of these special police?

A. Yes, sir; I think a great many of them are members of these clubs.

Q. Why do you think so, if you yourself did not know these policemen?

A. I got my information from Mr. Weaver and Mr. Morris, on whom I had a right to rely.

Q. Did you not say to this Commission a little while ago, that you had no knowledge of the politics of any one of these persons?

A. I have none in the world.

Q. Why is it if you had no knowledge of the politics of any of these extra police, that you now say to this Commission that you suppose a large part of them were members of the Democratic clubs?

A. I said I never asked any man on the special police force what his politics was; that these men were selected in the manner that I informed you, and that it was my belief that they were Democrats.

Q. Didn't you say, when I first asked you, and wasn't your first answer, that you had no knowledge of the politics of any one of these special policemen?

A. I have no knowledge; it is a mere presumption on my part.

Q. Your present state of mind is, that you believe many of them, probably the majority, were members of the Democratic clubs?

A. And I think they were members of the Democratic party also.

Q. Mr. Suter, do you know at what hour the polls of Louisville, its various precincts, were opened?

A. In the morning?

Q. Yes?

A. Seven o'clock.

Q. The law is at seven o'clock; do you know whether that law was complied with in the various precincts in Louisville?

A. I do not.

Q. Had you any knowledge of certain of those precincts not being opened until after seven o'clock?

A. I did not.

Q. Do you know whether at all of the precincts of the city of Louisville the election officers were divided equally between the two parties?

A. I don't know a thing in the world about that; I had nothing to do with the appointment of them.

Q. I am not asking you about that; I am only asking you about your knowledge as to whether at these precincts the officers were equally divided?

A. I don't know that; I don't know whether they were, or were not.

Q. You have no knowledge on that subject at all?

A. No, sir.

Q. Were you present at any of the election precincts during that day?

A. I was present at the one where I voted, and possibly several others.

Q. Was it a quiet election?

A. Yes, sir.

Q. Was it not an unusually quiet election?

A. Yes, sir; I thought it was very quiet. I saw no disturbance at any place.

Q. The order issued by the Board of Safety to the Chief of Police, to obey the injunction, was passed after four o'clock, was it not?

A. Just about four o'clock, I think—maybe a little after; I don't recollect. The injunction wasn't served on me, but I understood when I got there that it had been served somewhere along about 3.30, or 3 o'clock, and the Board went into session, and issued a written instruction. I haven't got it, but I wrote the instruction myself; it has been read here by the Chief of Police.

Q. It is the one that Capt. Haager read?

A. Yes, sir; and issued it to him.

Q Now, are you not quite certain that that instruction was prepared after the polls closed, and after four o'clock?

A. I think maybe it was.

Q. Therefore it did not, in any way, interfere with the taking of the ballots, the taking of the ballots had been closed before that order was issued?

A. Of the voting you mean?

Q. Yes, sir.

A. Yes, sir; I think it had.

Q. No policeman had been ordered by your Board, or by the Chief of Police, to take any action under the injunction until after the polls were closed?

A. Yes, sir; that is my recollection.

Q. Did you see any of the soldiers on the streets that day before the polls closed?

A. Yes, sir.

Q. Where?

A. I saw them on Sixth street, and I saw them on Main street between Fifth and Seventh.

Q. The armory was located where?

A. On Main street just above Seventh.

Q. And you saw them on Fifth street?

A. Yes, sir; I saw quite a squard about Rufer's Hotel; then I saw quite a number out on Sixth street, pretty near to the City Hall.

Q. Was there any voting precinct or booth between the armory and where you saw these soldiers?

A. No, sir.

Q. In passing from the armory to Rufer's, or passing from the armory to where you saw them on Sixth street, did these soldiers have to pass by any election booths?

A. No, sir.

Q. What time of the day was it that you saw them?

A. Well, I say I think about nine or ten o'clock in the morning I saw quite a number on Sixth street, and then somewhere along about 7:30 I saw quite a batch of them up on Main street; and then as I passed on out of the street I saw more of them at Rufer's Hotel.

Q. Did you see any soldiers at any other time on the street?

A. Yes, sir.

Q. At what time?

A. I think it was about six o'clock, or five-thirty, somewhere along there; it was after dusk.

Q. Where did you see them then?

A. I saw them marched out of the armory in three or four squads; it looked like about fifty or seventy-five in a bunch, and some of them marched down Main street and some of them went out Eighth, and I think one squad went out Seventh, and it looked like a bunch went on down Main street.

Q. It was then an hour and a half after the polls closed?

A. Somewhere along five-thirty.

Q. Did you see any squad of soldiers at any precinct, and if so, at which one?

A. No, I didn't see any at any precinct at all.

Q. Did you see any squad of soldiers force any Inspectors into any precinct?

A. No, I didn't see that. I got official information of it.

Q. Were you present at any precinct when there was any squad of soldiers at that precinct?

A. No, sir; I was not.

Q. Whatever you have said to the Commission about the soldiers forcing has been from sources of information other than your own observation?

A. If I said the soldiers forced Inspectors in, I didn't intend to say that. I intended to say this, that the soldiers marched to various precincts in the city, and then they would go up and ask, "Is so and so in here"—Brown Inspectors or Republican Inspectors.

Q. You don't know that of your own knowledge?

A. I don't know that of my own knowledge; I got that from the police who had previously put the Brown Inspectors in there.

Q. Do you not know that in point of fact, the officers in charge of those soldiers only found two precincts where the vote was still

being counted, and that at all the other precincts the vote had been counted, and the booths had been deserted by the election officers?

A. I don't know that. I know that they went to Eighth and Green, and I think to Eleventh and Walnut.

Q. Do you know of any others; those are two?

A. And they marched on down to precincts down town.

Q. Now, have you any knowledge or information, I do not now limit it to knowledge, but to information, of the military having gone to any precinct, except the two you have mentioned, before the officers of election had performed their duty, and had left the polling place?

A. I don't know whether the officers had left, or not.

Q. So far as your information is concerned, then, there were only two precincts, I believe you said, one at Walnut—

A. There was one at Eighth and Green and one at Eleventh and Walnut; I think it was the Eleventh and Walnut street precinct.

Q. Those are the only two precincts at which you had any report that the officers had not performed their duty?

A. They went to other precincts, and I don't think the polls had been closed at that time; I don't think the votes had been counted at that time.

Q. But you have no information on that subject?

A. No, sir; but it usually takes until 8 o'clock to count the votes, cast up the votes.

Q. Do you know what those two precincts cast ordinarily?

A. No, sir.

Q. Have you taken the trouble to look at the reports—the returns from Louisville—as to the number of votes cast, and the persons for whom those votes were cast?

A. I know in round numbers about how the vote was cast.

Q. Do you know whether at these various polls there were Challengers who had copies of the registration and who, as the voters came to the polls, looked at the registration list and found the names and checked them off?

A. Well, that is usually the case. I don't know—

Q. Do you know whether that was done at this time or not?

A. I don't know, but I presume it was. The workers on both sides have lists of the registered voters who are entitled to vote.

Q. If that is true, there now exists, possibly they are not in the hands of the Democratic Challengers, a list of the votes which will show with accuracy how many persons registered as Democrats actually voted, and how many who registered as Democrats did not vote, will it not, Mr. Suter?

A. If they have them I presume it would, but I don't know that they have got them.

Q. That is the usual way, is it not—you have been a politician some years?

A. Well, I don't know that as a politician.

Q. Active in politics? Now, do you not know, that the mode in which the vote is kept in the city is, that at each poll the Challenger of each party has a copy of the registration list, and that as each voter comes the registration lists were examined, and the person, if his name is found thereon, is checked off?

A. Colonel, I have been engaged in elections where we didn't have money enough to get those books, but it was always done where we could get them.

Q. That is the rule, if you can get them?

A. Yes, sir.

Q. I didn't know how poor the party was in Louisville this time, but wasn't that the way it was done this time?

A. I think it was.

Q. If that be so, isn't it true when the polls closed, there was in the hands of the Challengers of the respective parties each, a book, which would show with approximate accuracy, being sometimes careless, who had voted, and to what parties the voters belonged?

A. Well, I presume so; still, if they had the book, and kept it, they ought to have it now—yes, sir.

Q. I mean, at that time?

A. If they made the marks, and kept a record of the vote, and who didn't, they ought to have the book now.

Q. Now, if that is so, there was in the hands of the Democratic Challengers when these polls were closed, a book showing at each poll what Democrats who had registered as Democrats, had voted, and showing who that registered as Democrats had not voted, would it not, Mr. Suter?

A. Yes, sir; if it is true that they had the books to start with; and retained them until the polls closed, and kept a record, and have the books yet, I presume they have got them.

Q. Mr. Suter, did you think that that was an answer to the question that I put to you?

A. Yes, sir. Colonel, I tried to answer it as accurately as possible.

Q. Did you try to answer it; on the contrary, didn't you try not to answer it?

A. No, sir; I did not.

Q. How can you be mistaken, being a lawyer, when I asked you if they didn't have it on the night when the polls closed instead of asking you if they had it to-night?

A. The fault is not always with the party that answers it. You have asked that question fifteen times.

Q. And have not yet gotten an answer to it from you?

A. Maybe you are not capable of understanding it, and these other gentlemen do?

Q. I accept the lecture, Mr. Suter, and am very glad to have any information that you will give to me.

A. Don't mention it.

Q. And even for very small favors, at my time in life?

A. Small favors, you know, are thankfully received by those who need them.

Q. Now, I will ask you, Mr. Suter, if you haven't taken great interest in this contest?

A. Yes, sir.

Q. I will ask you if you haven't helped to prepare it?

A. No, sir.

Q. I will ask you if you haven't been in consultation with the lawyers for the contestant?

A. No, except they wanted to find out what I knew.

Q. Did they succeed in doing it?

A. Yes, sir; I will say that for them, but they are both very able lawyers.

Q. Evidently they must be.

A. Yes, sir; they are indeed.

Q. Mr. Suter, is it not true that in Louisville there were a large number of persons who registered as Democrats that were openly opposed to the election of Mr. Goebel?

A. I don't know that, because I don't know how anybody registered except myself; because I didn't examine the registration books.

Q. Isn't it true that there were a large number of persons who have heretofore been considered as Democrats, who opposed the election of Mr. Goebel?

A. Well, there are a large number of gentlemen who left the party in 1896, that still claim to be Democrats, that said they were against Mr. Goebel, but I never thought a man was a Democrat that was against the nominee.

Q. Are there not a large number of Democrats who, in 1896, voted for Mr. Bryan, and supported him cordially, who, this time, were supposed to be against Mr. Goebel?

A. Not one-third as many as there were men who voted for McKinley in 1896, and voted for the Democratic ticket this time.

Q. That I didn't ask you, Mr. Suter. I asked you whether there wasn't a large number of Democrats—did you not understand the question?

A. Not so many—no, sir.

Q. Didn't you understand the question?

A. Not so many to my knowledge.

Q. Did you understand the question?

A. I did, and have answered it twice.

Q. Why didn't you answer it then?

A. I answer always in my own way; you can form the question and present it to me, and I will answer it just exactly as I feel I ought to answer; that is my privilege, and you have the privilege of asking a question just as you please.

Q. I will repeat the question, Mr. Suter, that I asked you; is it not true that there were, in the city of Louisville—there was in the city of Louisville, many persons who were Democrats in 1896, who voted and advocated the election of Mr. Bryan, who, at this election, were openly opposed to the election of Mr. Goebel?

A. Well, I know possibly of twenty-five or thirty.

Q. That is all?

A. Yes, sir; that is all that I know.

Q. That is all you know?

A. Yes, sir.

Q. That is all that you know in your personal acquaintance?

A. Yes, sir.

Q. Twenty-five or thirty?

A. Yes, sir; that would cover it, I think.

Q. That were voters in 1896, and who were the supporters of Mr. Bryan, who were, 1899, the opponents of Mr. Goebel?

A. Yes, sir.

Q. Do you know how many votes were received by Mr. Bryan and Gen'l Palmer in the city of Louisville in 1896?

A. No, sir; I could not tell you now; I have forgotten. I did know.

Q. Do you not know that in the county of Jefferson, in 1896, Mr. Bryan received 16,707 votes, and Gen'l Palmer 1,078, being an aggregate of 17,785?

A. I knew that Mr. Bryan had received, in round numbers, somewhere in the neighborhood of 16,000 votes; I never paid any attention to the vote received by Palmer and Buckner.

Q. I will ask you whether in 1899, Mr. Goebel did not receive, in Jefferson county, 15,023 votes, and Governor Brown 2,672, making an aggregate of 17,695, or a difference between the combined vote received by Mr. Bryan and General Buckner in 1896, and the combined vote received by Mr. Goebel and Governor Brown, only a difference of ninety?

A. I don't know that, but I presume it is true.

Q. Sir?

A. I don't know it, but I presume it is true.

Q. If that be true, then the difference in the number of votes cast by persons claiming to be Democrats, whether they were Democrats or not, claiming to be Democrats, in the county of Jefferson in the year 1899, was only ninety, as compared with the vote received by Palmer and Buckner in 1896?

A. I don't know that, but I presume it is so.

Q. I will ask you whether, in 1897, in the county of Jefferson, Mr. Shackleford did not receive 21,776 votes, or about that?

A. I cannot remember that. I presume that is correct though.

Q. And Mr. Bailey 20,657?

A. I presume that is correct.

Q. And Mr. Hindman 2,793?

A. I presume so; I don't know it.

Q. So that, if that be true, isn't it true that the Republican loss this time is over 2,000, and the Democratic loss is about 5,000?

A. Well now, conditions were entirely different in 1897. They had a very hot Mayor's race on there, and there was a very large vote gotten to the polls, and that increased the vote there very much; and that was one of the largest votes cast at that time that had ever been cast. Now, this time, taking the registration for a basis of calculation, the Republicans increased their vote about 2,000 over the registration, and the Democrats lost about 9,000.

Q. Do you know whether the Democrats lost, Mr. Suter, by Democrats not voting, or by Democrats voting for Mr. Taylor?

A. I think they lost four or five thousand votes by Democrats not voting.

Q. Not voting?

A. Yes, sir.

Q. There was another difference, was there not, in 1897, that the Democratic party of almost all shades was united in the support of Mr. Weaver?

A. Yes, the party was pretty well united there.

Q. The Dispatch, Courier-Journal, Times and Post were all the advocates of Mr. Weaver at that time?

A. I think they were—yes, sir.

Q. And the vote received by Mr. Weaver was very nearly the full vote of the united Democracy of all shades, in Louisville, of 1897?

A. Well, it was the largest vote that had been gotten out there for some time, and I think that possibly three or four thousand Republicans may have voted for Mr. Weaver that time, because there was some dissatisfaction in the Republican party.

Q. There was also, in addition to that, some dissatisfaction——

A. And I think it was due to that fact, the increase of the Democratic vote at that time?

Q. Do you know, of your own personal knowledge, anybody that was intimidated by the presence of the militia?

A. No, I never had anyone to tell me that they stayed away from the polls on that account, because a man would naturally hate to tell that, because it impugns his courage, to some extent.

Q. Can you give the Commission the name of a single person who voted at that election differently from what he would have voted on account of the presence of the militia?

A. No, sir; I cannot.

Q. Can you give to the Commission the name of a single person who did not vote, who would have voted, but for this military?

A. No, sir. Now, I can give you some testimony, that isn't testimony in the strict letter of the law.

Q. I asked you if you could give, from your own knowledge, the name of a single voter?

A. Not from their having told me—no, sir; but I know of instances—

Q. Can you give to the Commission the information as to whether the precincts, in which the production of the vote cast this year over 1897, were Republican or Democratic precincts?

A. I think the largest fall off was in the Seventh Ward, which is largely a Democratic ward, and I think the most of it was in Democratic precincts.

Q. Have you taken the trouble, Mr. Suter, to look at that?

A. No, I only know in a general way, that I have been told by those who have looked it up. My information is not personal, not at first hands.

Q. Can you file with the Commission as soon as possible, so we can examine it, the list of the extra policemen sworn in on election day?

A. Yes, sir.

Q. I wish you would send it?

A. Yes, sir.

Re-direct examination by Mr. Phelps.

Q. Those extra police that the gentleman has referred to in these questions—were any of them put in active duty on election day?

A. Not one.

Q. Any of them unformed at all?

A. No, sir.

Q. With reference to Judge Toney's order of injunction, I will ask you whether or not there was an extra published immediately after the granting of the injunction, between twelve and one o'clock, of the Post, announcing that the injunction had been issued, and that the Governor had been ordered to issue a military order to enforce it?

A. My recollection is that Judge Toney's letter to Gov. Bradley was published in the paper that afternoon—yes, sir.

Re-cross-examined by Col. Breckinridge.

Q. I don't know your habits down there; do you recollect which one of the evening papers, and what time it was published?

A. No, I do not, but I think it was possibly about 2:30, somewhere along there. It was some time before the injunction came out; they seemed to have had some inside information, and knew it was coming.

Q. That paper was filed by you, as part of your deposition?

A. Yes, sir; I filed it.

Q. Did you contribute anything to the campaign fund?

A. Not a five cent piece.

Q. Your interest in the election of Mr. Goebel was therefore an entirely a political and moral interest, and not a pecuniary interest?

A. My interest in Mr. Goebel was largely personal. I have known him for some years, and was interested in the success of the ticket.

Thereupon the Board adjourned until Friday, January 19th, 1900, to 2 o'clock p. m.

Attest:

SAMUEL J. SHACKELFORD, *Clerk.*

By ROBERT L. GREENE, *Deputy Clerk.*

TRANSCRIPT OF RECORD.

Vol. 8.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

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WILLIAM S. TAYLOR AND JOHN MARSHALL, PLAINTIFFS IN ERROR.

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 16, 1900.

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FRANKFORT, KY., January 20, 1900.

The board met pursuant to adjournment this day at 2 p. m., in the Senate Chamber.

H. B. Rice, a witness, called for the contestee, being duly sworn and examined by Mr. Bradley, testified as follows:

Q. Where do you live?

A. I live near Paintsville, in Johnson county.

Q. How long have you lived there?

A. I have lived in that county all my life, forty-six years.

Q. Did you see these ballots that were being voted up there at the last election?

A. Yes, sir; I saw some of them.

Q. Could you or not see the stencil mark on them when the ballot was folded?

Objected to.

By a committeeman: What position do you hold in Johnson county?

A. I was a member of the election board—County Board of Election Commissioners.

Q. Were you an election officer at any precinct?

A. No, sir.

Q. Were you an inspector or a challenger?

A. No, sir.

Q. What opportunity did you have to see the ballots?

A. We passed upon some ballots as election board—that is, several questioned ballots.

Q. Those ballots were deposited with the county court clerk of Johnson county, were they not?

A. Yes, sir; brought before the board.

Q. Those ballots were brought before the board?

A. Yes, sir.

Q. And that is your opportunity for having seen those ballots?

A. That is some of the opportunities.

Objection withdrawn.

By Governor Bradley. How many of these ballots did you observe?

A. Well, I could scarcely say; there was, as I remember, from one precinct, fifteen rejected or questioned ballots that were returned for the consideration of the board.

Q. They have not been filed with the board, those fifteen ballots?

A. I saw the ballots that had not been used.

Q. State whether or not you could see the stencil mark through these ballots when they were folded, those that you saw.

A. Well, when those ballots were properly folded the stencil mark could not be seen, except the folds of the ballots should be pressed very close together in such a way as that and held between the individual and the light.

Q. When did you hear the first complaint about these tissue ballots in your county there, as they were called?

A. I think I heard one or two persons speak of their being thin on the day of the election, but there was comparatively nothing said about it until after the election was over, so far as I heard.

Cross examined by Mr. Kohn.

Q. Where is your place of residence?

A. Near Paintsville; three miles south of Paintsville.

Q. You have been there for a number of years?

A. All of my life.

Q. Do you know the clerk of the Johnson county court?

A. Yes, sir.

Q. What is his name?

A. Preston.

Q. J. M. Preston?

A. J. M. Preston.

Q. Do you know his signature?

A. I think I would recognize it.

Q. I will ask you now to look at the ballot now shown you which has been filed with the commission and state whether or not that is his signature upon the back of the ballot?

By Gov. Bradley: Which ballot is that?

By Mr. Kohn: A ballot which has been introduced here.

By Governor Bradley: By whom?

By Mr. Kohn: Filed before the commission; filed by the county clerk of the county?

A. Yes, sir; I think that is Mr. Preston's signature.

Q. I will ask you to state whether or not that is the class of ballots used in the election in Johnson county?

A. Yes, sir; I think so.

Q. Now, I will get you to state to this commission whether or not it is true that you can fold that ballot any way you please and easily can see through it—is it not true that fold the ballot as you please, you can see the printed matter through it—can't you see it clear across the hall, almost?

A. Yes, sir; I can see it, holding it between me and the light.

Q. Put it upon the table?

A. I can't see it that way.

Q. Can't you see the printed matter, the device there?

A. Yes, sir; that is not the way a ballot should be folded.

Q. How do you say a ballot should be folded? Fold it the way you say it ought to be folded.

The witness folded the ballot.

Q. Where is the signature of the clerk? That has to be out upon the ballot?

A. The signature of the county clerk—there it is.

Q. Where is the clerk's signature on that ballot?

A. Of the clerk of the election?

Q. Yes.

A. Right there, it should be.

Q. That is the way you say it is folded?

A. Yes sir; the secondary stub to be torn off.

Q. Can't you see the printed matter there?

A. Indeed I can, when I hold it between me and the light.

Q. Hold it any way you please, can't you see it as I hand it to you; see the printed matter on the other side?

A. Yes, sir; as you hold it, that way, I can.

Q. If there is any device, if there was any mark under any of these devices, there is none under any of these devices, can't you see that device?

A. If I hold it between me and the light, I can.

Q. Can't you see that device; can't you tell that device?

A. By pressing it down, as I said, I couldn't tell what device that is; I can see there are dark objects or dark places on the opposite side.

Q. This is the official ballot that was used in Johnson county at the last election?

By a committeeman: I wish you would fold the ballot like you folded it a moment ago, please?

This was done.

By a committeeman: Where is the secondary stub now that was detached from that ballot, from what end of it?

A. The secondary stub has not been detached.

By the committeeman: Where is the secondary stub?

A. It was right here at the bottom. It should have been perforated, I suppose, but it has not been.

By the committeeman: What is that over next into the device; what stub is that?

A. That is where it was torn off from the stub book, I suppose, It should have been torn here.

Q. (Mr. Kohn resumes.) Is that where the secondary stub comes? Where you tear that off?

A. No, sir; that fastens to the main stub in the stub book. The secondary stub is here where the voter's name is placed at the bottom. It should have been, I supposed, perforated, but it has not been, and there is a place to tear away, and when folded properly it shows not only the name of the clerk of the court, but the name of the clerk of the election and the name of the voter, and all without turning the ballot.

Q. Do you mean to say that is the way the voters folded the ballot that voted in Johnson county?

A. I say that is the way it should have been.

Q. When folded just in this way, a single fold—

A. I never saw any ballots except those that were returned.

Q. You don't know how they were folded?

A. Only the ballot I voted myself.

Q. You say you were an election commissioner; one of the election commissioners for Johnson county?

A. Yes, sir.

Q. To what political party do you belong?

A. I belong to the Republican party.

Q. You say you heard several men complain of the thinness of the ballots?

A. No, sir; I didn't say that.

Q. On election day?

A. No, sir; I said I heard one or two parties speak about it, that the ballots were thin.

Q. Where were those parties when they spoke of it?

A. They were about Paintsville.

Q. Were you an officer of the election?

A. No, sir.

Q. Were they voters?

A. Yes, sir.

Q. Had they voted?

A. I couldn't tell you.

Q. How did they come to complain of the thinness of the ballots in Johnson county?

A. They didn't make it as a complaint; they simply called attention to the fact that the ballots were thin; whether they had voted, or not, I don't know.

Q. Will you give us the names of those gentlemen who made a statement to you that the ballots were too thin?

A. I don't remember the name of any one except Mr. Mayo, John C. C. Mayo, who was also an election commissioner; I remember he spoke of it.

Q. You say there were fifteen ballots returned and contested?

A. Questioned ballots.

Q. Where are those fifteen ballots?

A. I forget whether they were destroyed by the county board or whether they were put with the stub books and put away; I couldn't say now.

Q. Those fifteen ballots were an exact copy of this, were they not?

A. I suppose they were very much the same. I heard it said by other parties.

Q. I am asking of the ballots.

A. I heard it said by other parties who had investigated the ballots, that some were thinner than the others; I couldn't tell you about that, however.

Q. Do you know who printed these ballots?

A. I have been told who printed them.

Q. Who?

A. The Dupaw Printing Company, at Catlettsburg.

Q. Is he a Republican?

A. It is a company, I think it is run by, possibly owned by, Mr. Patton, who, I suppose, is a Republican.

Q. The county clerk of that county a Republican?

A. Yes, sir.

Col. Thomas Bullitt, a witness for contestee, being duly sworn and examined by Mr. Sweeney, deposes as follows:

Q. Will you please give the commission your age and residence?

A. Sixty-one years of age; my residence is Louisville, and has been since I was a grown man.

Q. What is your profession?

A. Attorney at law.

Q. Have you ever held any official position?

A. I have neither held nor sought official position of any sort, sir, in my life.

Q. Where was you raised?

A. I was born and raised in Jefferson county, upon a farm about nine miles out of Louisville.

Q. Were you a soldier in the civil war between the States?

A. Yes, sir, I was a member of Gen. John H. Morgan's command,

Q. Were you an officer in that command?

A. I was a lieutenant.

Q. You have resided in the city of Louisville since then?

A. At the conclusion of the war, after I left the army, I returned to Louisville and commenced the practice of the law, and have been engaged in practicing law since then.

Q. What has been your past political affiliation?

A. I cast my first vote for John C. Breckinridge for the Presidency of the United States. I have from that time out always affiliated with the Democratic party, and always voted the Democratic ticket in State and National elections, and until the present race,—I should say, perhaps, in 1895, in the race between Governor Bradley and Mr. Hardin—I did not vote. In the present contest I voted for Mr. Taylor.

Q. You are a registered voter in the city of Louisville?

A. I was, sir.

Q. Registered as a Democrat?

A. I can't say I registered as a Democrat this last time. I held myself independent when this canvass commenced to do exactly as I pleased; but my affiliation has always been with the Democratic party.

Q. In 1897 were you a supporter of Mr. Weaver, for mayor of the city of Louisville?

A. I voted for him in 1897.

Q. Any explanation you wish to make about that?

A. No, sir, I have no desire to make any explanation of it, particularly at the present.

Q. The question has been asked how you voted in 1896?

A. I voted for Palmer and Buckner, which I considered the only true democracy of that time. I wish it to be understood that I did not qualify my democracy through having voted for Palmer and Buckner.

Q. Were you at voting precincts in the city of Louisville of the day of the last November election, except the one at which you voted?

A. Yes, sir, I spent the day at a poll different from that at which I voted. I went out early in the morning to a poll on Sixth street, in the Southern part of the city, where I staid until nine or ten o'clock, and then went down to my own poll on Fifth street and voted, and returned and remaining until eleven or twelve o'clock, when I returned to my office, where I remained until in the afternoon.

Q. Was that a peaceable and quiet election that day?

A. I do not believe—of course, I did not go over the city—I passed to and fro several times, and I passed several polls—the court house, the voting place at Fourth and Breckinridge—I passed several voting places, and while, of course, I can't speak of the whole city from personal knowledge yet from that knowledge which one has by living in a city by knowing what is going on, and by the fact that if there is a disturbance it is known, and promptly known,—I believe I am justified in saying there has never been in the city of Louisville a more peaceable and quiet election than that held upon that day.

Q. No one interfered with you in the casting of your ballot in any way?

A. No, sir, nor did any one in any way interfere at the polls at which I stayed during the day.

Q. It has been said by the attorneys upon the other side, and witnesses something about sensational articles in the papers of the city of Louisville and their effect upon the public mind. I will get you to state to the commission from your general knowledge of the people of Louisville the condition upon the day of the election, and the days preceding the election, what effect that had?

Objected to unless the articles referred to are produced, and it be shown that Col. Bullitt read the articles.

Q. Did you read the Louisville Post and the Louisville Dispatch?

A. I would say in general that I have for many years taken regularly the Courier-Journal ever since I have been a man grown and ever since I have been in business both at my office and at my house. The Times and Post, I have been in the habit of purchasing every day. I do not undertake to read all the articles of these papers or all the editorials, but I read many of them, and I read very many of them about the time you refer to. I am not in the habit of reading

the Dispatch. I am under the impression that I read the Dispatch very little. I don't know that I could say I read any articles in the Dispatch. I read the Post, and I read the Times, and the Courier-Journal.

Q. You are fairly well acquainted with the citizens of Louisville, are you not?

A. I have lived in Louisville all my life, and had quite an extensive connection with various kinds of people in Louisville.

Q. Is not your acquaintance very extensive among the leading business men and citizens?

A. It is extensive. There are gentlemen who know more than I do. I think I know generally the people of Louisville.

Q. I will get you to state to the commission whether or not it was the impression and general belief among the people with whom you were associated, and the people of the city of Louisville in general, that there had been a conspiracy entered into on the part of the police, the sheriff, the mayor, and other officers there, the fire department to break up the election, or to have the returns falsified and disfranchise the citizens of Louisville?

Objected to, sustained, and exception.

Q. Colonel I will get you to state to the committee if within your knowledge you know of a single solitary voter in the city of Louisville who was intimidated and deterred from going to the polls on account of the rumored presence of the militia in that city?

A. I don't know, nor have I ever heard of any person who was thus intimidated from going to the polls.

By a committeeman: Just a little louder.

A. I will endeavor to be heard, I was trying to be heard, I didn't like to be speaking too loud. I responded to the question.

By the committeeman: I heard the response but with some difficulty.

Q. (Mr. Sweeney resumes.) Were you a member of what has been denominated as the Honest Election League in the city of Louisville?

A. I was not a member of that league, sir, at all.

Q. You went to your voting precinct upon the day of the election and spent a large portion of the day there, I believe you have stated?

A. Not at my voting precinct. I went, by arrangement with four or five other gentlemen—I am glad to say all of them gentlemen of high character—I went to a poll on Sixth street in the Southern part of the city and I remained there from the time of the opening of the polls, which was either six or seven o'clock—seven o'clock, I reckon—until about eleven o'clock in the morning, between eleven and twelve, except that in that interval I went to my own voting precinct on Fifth street. About eleven or twelve o'clock, having become satisfied that my further presence was unnecessary at the poll where I had gone, I returned to my office. I then returned to that poll however, in the afternoon and I remained there until the poll was closed. Of course when I say—I wish to be understood

when I say that I went to this poll on Sixth street, both myself and the other gentlemen who were with me were exceedingly careful never to venture within the legal limit of fifty feet of the polls, so that when I say I was at the poll I want that understood.

Q. What induced you to go there that day, Colonel?

A. Well, now, the inducement to go there on that day was this: Of course, gentlemen can not act in political matters; they have got to form their own judgments, and they have got to act upon those things which are satisfactory to their own minds as sufficient to guide and direct their actions. That action, of course, is frequently based upon evidence which would not be legal evidence to establish the fact or the expectation, anticipation, or suspicion, if you choose to call it, which is in their own minds. I acted; went there with these other gentlemen for the purpose, and this distinct and sole purpose of seeing, of watching, of observing; of seeing that there was no violation of the law committed either by the police authorities, the firemen, or any individual—went with the understanding and agreement between ourselves that if there were any violations of the law, by any party connected with any party so far as we would observe, that we would at once report those violations, and that we would swear out warrants for the arrest of the party that might be guilty, whether it was crowding to the polls within, beyond the legal limit, whether it was bribery which could be seen, whether it was at intimidation or what not, the distinct agreement and understanding with which we went was that no matter by whom anything of that sort would be attempted, if it came within the sphere of our observation, that we would undertake to have it corrected by the arrest of the proper parties. That was the distinct, avowed object. I would like to say in that connection that when I was requested, as I was requested, my going, our going, I want to say, was part of a general movement of a large, a very large, and very important movement in the city of Louisville and one that arose out of our past experience, and especially our experience within the last two or three years, especially our experience in 1897, the city election of 1897, the experience at the June convention, 1899, and at the primary. It was a very large movement. It was a movement inaugurated by and sustained by what my friend this afternoon spoke of as professed reformers. I didn't hear them call themselves anything of that sort. The men who were engaged in that movement, though I was not engaged in it myself, further than to agree, upon their request, to go and attend the polls with a number of other very responsible men—I knew the men and I regarded them them as good citizens and honest men. I regarded their purpose to be good, and I agreed to go—as a stipulation, distinct and unequivocal stipulation and condition, however, that the party would go unarmed. I gave it to be very distinctly understood that I would not be a party, would not be one of any party of gentlemen going to the polls for any purpose whatever other than of voting; I wouldn't be one of a party going to the polls

unless the distinct stipulation that not only I should be unarmed, but that there should not be arms in the party at all, and that the purpose and the action which was to be taken by the gentlemen was to be limited to that which I have stated, exercising such moral influence as honest men might be supposed to exercise, and men of position in society; a deliberate and resolute purpose to suppress, no matter from what party it might come, Democrat, or Brown Democrat or Republican, to suppress and report and cause the arrest of any man engaged in intimidation, bribery or gathering around the polls. Gentlemen, if I speak too long, possibly I may seem to go further than the question asked; but the question is a general one, and if I am to undertake to give to you gentlemen the views, the conditions existing, you must pardon me for undertaking to speak to you, perhaps even to go somewhat beyond the direct question that is asked me; but if I am to speak at all on this subject I do not wish to limit myself; I do not wish to speak at all unless I am able to just tell exactly; to give you a fair idea of what occurred.

By a committeeman: I understood you to say you were not a member of the Honest Election League?

A. I was not a member of the Honest Election League, sir.

By the committeeman: Did you co-operate with that league?

A. To this extent, sir. I was in Europe when the Honest Eelction League was formed. I was not, therefore, requested to join it, and when I came back it was organized, but I never was approached with a request to join it, and never thought about it, and did not give the matter consideration. About three or four days before the election took place I was requested by some gentlemen as I understood, in pursuance of some resolution of the Honest Election League—I never saw the resolution—but I was advised that it was desired by the Honest Election League that gentlemen occupying positions, occupying responsible positions in the city, men who had property interests, men who were supposed to have the confidence of the community, that they should go to every poll in the city of Louisville. When I was requested to do that, my first inquiry was that which I have stated, "Now, gentlemen, is it understood that we are to go unarmed," and that was the stipulation; and I was given to understand, why, of course, we were to go unarmed, and we were to go for the purpose named and only for this purpose. I then agreed to go with those gentlemen. That was the extent of my co-operation of my own formed with the Election League.

By a committeeman: Were the other gentlemen who accompanied you on that day members of that league?

A. I am not able to advise you. One of them, I think, was. The gentleman who came to me, I presume that he was, because I understood that he was acting at their request. The names of the gentlemen, if you desire, I will be very pleased to give you.

By Judge Yost: Give them to them.

A. Mr. John H. Brand, formerly of Lexington, Ky., and now for many years, however, a resident of Louisville; Mr. Embry L. Swearingen, Mr. Nunemacher, the printer, and a young son of my own recently arrived at years of maturity, and myself. There may have been one, or possibly, two others, but those are all that I now recall.

Q. (Mr. Sweeney resumes.) And these were all Democrats, were they not, Colonel?

A. All excepting one. I think Mr. Nunemacher is a Republican, and yet I am not perfectly certain of that. When you talk about Democrats nowadays, I suppose you have got to try to make some distinction between Democrats. Some of these were Brown Democrats and some were gold Democrats. I don't think that there was a Goebel Democrat in my party.

Q. They were very hard to find in the city of Louisville, anyhow, outside of the administration, were they not—Goebel Democrats?

A. Well, sir, the vote there shows for itself on that subject.

Q. You speak of the experience of the citizens of Louisville in past elections that induced you to take the step along with these other gentlemen that you did take; will you please explain to the committee what that experience has been?

Objected to; objection sustained.

By Judge Yost: What was the conduct of the police and firemen at the June election in 1899?

Objected to; objection sustained.

The chairman: We will give you the widest range to prove a conspiracy.

The contestees appeal from the ruling of the chair to the committee and the chair was concurred in by all the members on the board trying the Governor's contest, and the vote of the board in the Lieutenant-Governor's race stood five to two in favor of sustaining the chair, the chairman himself not having voted.

By a committeeman: I wish to ask if that June election was an election in any sense at all?

By Judge Yost: That is not before the board. That is settled. You spoke of the experience that you had that caused you to act in this way in conjunction with these men. Please tell the committee what that experience was. What the facts were that led to that belief?

Objected to.

By the chairman: I say to Judge Bullitt and I will say that he will surely appreciate the justness of the rule that any experience relating to the November election, 1899, the committee will be glad to hear.

By Judge Yost: Does the chairman hold that he can not go back of that at all where a conspiracy has been charged?

By the chairman: If he can state anything with reference to a conspiracy, you can ask him the direct question.

A. I can state nothing respecting a conspiracy. I have no knowledge of a conspiracy. I have, I think, some knowledge of the condition of affairs which existed in the city of Louisville at and immediately preceding the election of November, 1899—the Goebel and Taylor election. I have some knowledge of the condition of public sentiment and of the anticipations and apprehensions of the people of that town at the time which were grave and serious—so grave and so serious that I felt myself called upon at that time, in response to a request from the then Governor of Kentucky to give certain advice with reference to what should be done at that election. I shall endeavor not to entrench upon the ruling of the board, because I certainly have been lawyer long enough to realize what that is, and I shall make no reference to anything transpiring previously to that time preceding except to say this, that my personal conviction at that time, and I think that the conviction in the minds of the people—created in the minds of a very large class of the people in the city of Louisville at that time—that conviction I mean, which created grave apprehension as to the order or disorder that might arise upon election day was based not alone upon what was seen there that day, but was based very largely upon their past experience in elections which have been held in the city of Louisville during many years past, but more especially during the years 1897 and 1899. I say to you that if I am to attempt to state the condition of public opinion, as I conceived it to exist at that time, of course, I may state the condition of public opinion without reference to anything past. If I am to state the grounds upon which that opinion rested—the grounds upon which that belief, that opinion rested—it is, of course, necessary to refer to antecedent experience, because the experience of to-day—I mean the feeling of to-day—in important matters necessarily arises out of antecedent experience. I trust, sir, that I have not entrenched upon any ruling of the board.

Q. Well, what was the condition or state of the public mind in the city of Louisville upon the day of the election, and for several days prior thereto?

A. Well, sir, I have lived in the city of Louisville since the year 1865. I have taken more or less interest at all times in public affairs—not an active interest in the sense of participation in public campaigns. I have done that but little. I have been, I think, a somewhat careful observer, however, of the condition of the public mind, and I am forced to say that in my observation and experience, there has not been in the city of Louisville at any time, certainly not more than once or twice, I think—I hardly think at all—such a state of strained and intense excitement and apprehension as existed immediately prior to the election of November, 1899, such apprehension of disorder and riot likely to occur on our streets.

Q. I will ask you to state whether or not the citizens of Louisville, or at least a large portion of them, had any confidence in the police department of the city of Louisville, and its officers—its civil officers—in preserving order, and upon what that unrest that you have spoken of rested, or was founded?

A. I wouldn't say that the citizens of Louisville have no confidence in their police force. I believe that when separated from politics—

Q. I mean, so far as relating to elections?

A. The city of Louisville has a fairly good police system, and a fairly good city police force and men. I think very well of the chief of police of the city of Louisville; but now, Mr. Chairman, I might trench a little upon the rule that you have laid down for me, because—

The chairman: You know the rule of evidence well—

A. What I was about to say, I don't think trenches upon your rule. I certainly do not intend to do so, if I am to give you—what I want to say is this: If I am to give you what was my personal opinion and what was the opinion of those persons with whom I talked as to the probable action of the police force on that day—

Objected to.

The chairman: Judge Bullitt may state that he advised Governor Bradley to call out the militia, to show upon what the Governor acted.

Question repeated.

The chairman: I think it would be much more preferable to state on what facts this misconfidence of the people of Louisville was based, and not rumors.

Mr. Sweeney: I will change the question and put it in this way. Will you please state to the committee whether or not you advised Governor Bradley to call out the militia upon the day of the election, or in other words, to have the militia assemble at the armory for the purpose of being called out or ready to be called out, and upon what ground you based the advice that you gave to Governor Bradley?

A committeeman: In stating your grounds, Judge Bullitt, confine yourself to such facts as you know.

A. That is very good caution to give to a lawyer who has been practicing as long as I have, and I trust that I shall not be found—that I shall not, in the course of my testimony, be found to state as facts anything that I don't know; and if I give anything as hearsay I will be exceedingly careful to let it be understood in advance that what I am about to say is hearsay. Now the fact is, in answer to the question whether I gave advice to Governor Bradley, that upon—I think about two days before the election—my remembrance about it is that it was on Sunday night— I was invited by Governor Bradley to express to him my opinion upon the subject as to what

might be his public duty in reference to the calling out of the militia, as it is spoken of, though that was not the form in which Governor Bradley put it. The inquiry put to me by Governor Bradley, in effect, was what I thought about the propriety, not of calling out the militia into active service—I never understood Governor Bradley to contemplate that, except as a matter of the last resort; but the propriety of putting the Louisville Legion into its armory, a part or the whole of it. That was the question propounded to me by Governor Bradley, and upon that I very freely expressed to him my opinion, which was that it was unquestionably, in my judgment, a public duty upon his part—a duty which, if he failed to perform—would result in very serious consequences—consequences which would be injurious to the fair name and to the credit and welfare of the city of Louisville, and of the State of Kentucky. Now, in giving that advice to Governor Bradley, I accompanied it with this very distinct condition, that the military—Legion, if called out, if placed into the armory—it should be with the explicit understanding on the part of that body and its officers, that they were not to act except under direct civil authority, the Governor himself being the chief head of the civil authority in the State, and that if he called them out, put them in their armory, it should be with the most clear and distinct understanding, that the officers of the Legion were not to call them out into service, take them out of the armory at all except under his express order and under his express direction. Secondly, that they should not be—that if they were put there, it must be with the further explicit understanding and purpose in his own mind that under no circumstances should they be used for partisan purposes, that under no circumstances should they be permitted to visit the polls during the progress of the election, unless for the purpose of quelling a riot, which might have occurred around any one of the polls. That, in other words, if called out, they should be held in reserve for one purpose alone, and that should be to suppress—instantly to suppress—any breach of the peace, amounting to a riot in the city of Louisville, whoever might be at fault, without inquiry as to who was at fault, leaving that question to be finally determined by the courts, and the guilty parties to be punished, but that his duty would be to quell riot and disturbance, and that under no condition should the military be put into the armory except for that purpose. I received from Governor Bradley the assurance—what I understood to be the equivalent of a pledge upon his part—that the military, if called into the armory, should not be used, that no officer would be authorized to use it except under his direction, and that under no circumstances should it be used for partisan purposes, or for any purpose except that of suppressing violence. I wish to say in that connection, that having been in the city on that day, my own conviction is that that pledge was absolutely fulfilled, so far as I am aware—fulfilled ab-

solutely and in good faith, as I believe. I believe, gentlemen, that I have myself—I am a citizen of Louisville, and getting to be a man of some years—and I do not think that any circumstances could exist (I have no political relations with Governor Bradley) and no circumstance would exist which would induce me to advise or consent—

Objected to.

A. I think that when I have been asked to state whether I gave advice, I think I have the right to say what I am about to say, and which I shall say unless stopped by the chairman; that under no circumstances would I have given that advice, no matter what important political reasons might be given; advice to call out the militia which should be used for any partisan purposes.

Q. Now, Colonel, I will ask you, knowing the city as you did, and the surrounding conditions the condition of the mind of the people of the city of Louisville, as to whether or not it was necessary in your judgment to have the militia there upon the day of the election?

A. I should not have extended to Governor Bradley the advice which I did, which I gave, and which was not voluntary upon my part, which was sought by him; I would not have given that advice except that I felt that it was an imperative duty on his part. If I had not believed that there was grave apprehension, and sound and sufficient grounds for apprehension, or a very serious condition of things.

Q. Now, Colonel, I will ask you if Governor Bradley did not tell you that he would not call out the militia unless affidavits were made and fild before him by respectable and representative citizens of that city that the police or the civil authorities there would not discharge their duty, and could not be relied upon?

A. Whether Governor Bradley's statement on that subject was of the precise tenor of that you give—

Q. Well in substance, then?

A. —— I will not say. Governor Bradley's statement was substantially this: He made further inquiry, and that was as to his constitutional right, his constitutional duty, to call out the Legion, and to take control of it himself, if it was to be actively used for the suppression of riot. I expressed to Governor Bradley, as a lawyer, —whether that opinion was sound or unsound will be for every lawyer to settle, of course, for himself—I expressed to Governor Bradley the opinion that under the law he, being himself the head of the civil authorities of the State, that he was authorized to call out the military to suppress violence without request from anybody, without any declaration that the mayor would or would not perform his duty, without any declaration as to whether there was a conspiracy or not. If Governor Bradley were able to satisfy his own mind, I didn't think he needed further than to be able to satisfy his own mind; that it was a public duty. Governor Bradley did say to me in effect that he was not willing to take that course unless re-

sponsible citizens of Louisville would unite in a declaration to him that it was necessary, and I believe he went so far as to say that unless responsible citizens signed an application or statement to him that the civil authorities could not be relied upon. Now what was done in that respect I don't know. My connection with the matter ceased with answering the questions that in effect were propounded to me by Governor Bradley; the request that he propounded to me of advice as to his duty. Now what was done by Governor Bradley toward supplying himself with any such information, I don't know.

Q. When was that conversation?

A. That conversation, as I recollect it, was on Sunday night. The election occurred, I think, on the 7th of November, Tuesday. That conversation occurred Sunday night, the 5th of November, if I am correct as to the dates.

Q. You were invited by Governor Bradley to give your opinion as to whether or not he should have the militia in readiness?

A. I was invited, and I expressed myself to him, as I have stated, and he expressed himself as I have repeated that he did.

Q. Well, I will ask you to state whether or not you saw any soldiers at the polls upon the day of the election?

A. I did not.

Q. Do you know of any instance in which the soldiers we have been talking of interfered in any way with the rights or privileges of any voter of the city of Louisville or the county of Jefferson?

A. Of course, Mr. Chairman, I did not visit all the polls of Louisville. In fact, I visited very few polls of Louisville. Nor did I keep my eye upon the military at all. My office was very near to them. I saw a small squad come in uniform past my office, and to take lunch, as I supposed, at Rufer's Hotel. They were unarmed—all together in a small squad—returning directly. While I did not follow them, I think I may say it is impossible that the military force should have been called out in that city during that time and that I should not have known it. I think that that is impossible.

Q. The question I asked was, do you know, or did you hear any complaint of the military interfering or intimidating any voter in any way in the city of Louisville upon that day?

A. Not only I did not know and did not hear of anyhing of that sort on that day, but I didn't know and didn't hear anything of the sort, or any suggestion of the sort made in the public prints or elsewhere, for a good many days afterwards.

Q. What has been the custom, so far as the military is concerned, upon election days in the city of Louisville; that is, I mean by that, the custom of calling out a portion of the military to have them as guards at the armory, or a number of them at the armory for the purpose of suppressing riots?

A. I was one of the original organizers of the Legion, which was formed immediately after the great riots in this county arising out of the railroad strikes in 1877, and when we had in Louisville a great

strike that threatened a great riot. With a view to meeting promptly and suppressing anything of that sort in the future, the Legion was promptly formed, at that time under very discreet guidance, that of Col. Castleman, and I think it is true I was a member of the Legion in the early days. I kept up always with its history, being intimate with its colonel. I think it is true beyond question that ordinarily—certainly in all exciting elections—not only in all elections involving excitement, but at all times involving undue excitement on the part of the people, the custom has been to put a portion, or the whole, of the Legion into the armory, the ground of that being two-fold: First, to protect the property of the State and the arms, because, of course, it has been recognized always that if a row occurred, the armory was the place that would be first attacked for the purpose of arming one of the contesting parties; and the other, of course, to have them ready to suppress riot instantly upon its occurrence. I think I am not mistaken in saying that that has been the ordinary and uniform custom. I certainly so stated it to Governor Bradley, and if I made a mistake in that, Governor Bradley was misled by my mistake, but I do not believe that I am in error.

Q. I will get you to state from your knowledge of the city, with the regular police force scattered all over the city at the various voting precincts, for the purpose, or the pretended purpose, of preserving order, would it have been possible for the chief of police to have gotten a sufficient number of regular police together to have suppressed a mob of from one to two thousand people, or a large number of people, that might have congregated in the city upon that day, under the excitement then existing?

A. It has been for many years, sir, I think, the uniform habit always to have a policemen at every poll for the purpose of preserving order and making arrests if any disorder should occur. I notice Mayor Weaver, in his statement before this board, stated that the ordinary police force was something about two hundred and seventy-five. My recollection is that the number of precincts in Louisville exceeds that; not far from it. I doubt if there is more than one policeman to every poll. If the ordinary habit was observed, and I never saw a poll that I didn't see a policeman; so if that was the condition, unless you brought into use a large force of extra police, the regular police would be necessary to have to quell that trouble or riot.

Q. I will ask you to state to the committee whether in your opinion the presence of the military had a tendency to preserve the peace and promote a quiet and peaceable election, which you had?

A. Gentlemen, I am in my own mind absolutely persuaded not only that it did have that effect, but that it was the only thing which could have produced that effect. That is my deliberate conviction.

Cross-examined by Mr. James.

Q. You say that you are a Democrat?

A. Yes, sir; I consider myself a Democrat, notwithstanding I voted for William Taylor, because I have a great dislike for the Republican administration of affairs and I regard myself to-day as good a Democrat as Mr. James.

Q. You voted against Wat Hardin for Governor?

A. I did not, sir. I did not vote at all.

Q. You voted against Mr. Bryan for President?

A. Yes, sir; I voted for Mr. Palmer.

Q. How many speeches did you make for Mr. Palmer?

A. Just as many as I could. I did my level best to beat Mr. Bryan.

Q. And you are pretty near certain that your efforts were successful?

A. Very slight, I fear. I had hoped they were greater. I have not since that time affiliated with the Democratic party, the Goebel Democratic party.

Q. Nor the Bryan Democracy; or with the regular Democracy?

A. That depends upon the terms; what the term "regular" means.

Q. Chicago Platform Democracy?

A. I have no affiliation with nor subjection to the Chicago platform.

Q. What railroad do you represent in the city of Louisville?

A. I very much regret to say that I do not represent any. It is a matter of very serious regret that the last railroad client I had is gone.

Q. What railroad was that?

A. I was one of the organizers, put a great deal of money with others into the organization of the Louisville Southern, with the hope that we could do Kentucky some good and make some money; that we would benefit the State. We benefitted the State, and lost our money.

Q. Do you represent any trust company in Louisville?

A. You ask if I represent; I own stock in the Fidelity Trust Co., but I do not represent it.

Q. What line of the law do you practice, if any, as a specialty?

A. I practice of the line of law that my clients bring to me from the magistrate courts to the Supreme Court—the Court of Appeals; and, I am happy to say, a few times in my life in the Supreme Court.

Q. In the Supreme Court of the United States as well as in Europe?

A. Yes, sir; but I take anything. I have never been able to organize such a practice as to enable me to select my clients; I have been obliged to accept any employment of an honorable character that was tendered to me. I regret to say my practice for corpora-

tions has been small. I would like to have had that practice, as I believe it pays well.

Q. When were you in Europe?

A. I concluded to spend my summer in Europe and I took a month. I took a slow vessel to Europe and it took me twelve days. I was there four days on the other side, and it took me twelve days to come back, taking up the month.

Q. What month was that?

A. August; from the middle of August to the middle of September.

Q. You stated that you went to the polls on the election day in company with John H. Brand. State to the committee, if you please, what is the business of John H. Brand in Louisville?

A. Real estate agent. He has a very large business.

Q. Mr. Nunemacher; he was in the party?

A. He is a printer.

Q. He is the same Nunemacher that took the contract from Mr. Helm, representative of the Louisville & Nashville Railroad Company, and who took four days in which to prepare the injunction it was presumed would be issued by Mr. Toney?

A. Now, you are asking things in which you apparently presume I have some relation to the Louisville & Nashville, or Judge Toney either. I have no knowledge of that. My relations with the Louisville & Nashville have been rather unfriendly—not with Mr. Helm; but I have no knowledge of any contracts that they have had. I have not their confidence in the slightest possible degree about any contracts in respect to Mr. Nunemacher or any injunction before Judge Toney.

Q. I will ask you if Mr. Nunemacher is not and has not been for years, the printer of the L. & N.?

A. I have not the remotest conception.

Q. I will ask you whether or not he is a Republican?

A. I am of the impression that he is.

Q. You said, I believe, in answer to the direct examination, that there was not a single Democrat in your crowd that went to your polls?

A. I said they were all Democrats except Mr. Nunemacher.

Q. All of them bolting Democrats?

A. Possibly that is the term you would apply.

Q. That is the correct term?

A. I think not.

Q. Do you not think a man who has affiliated with one party and who supports another is a bolter?

A. I do not believe I am called upon to enter upon an argument of that kind before this board, and I decline it.

Q. You say you were called upon to give advice to Governor Bradley?

A. I was requested to meet Governor Bradley.

Q. Where was that meeting?

A. At the Galt House.

Q. State the names of the gentlemen there present?

A. I am unable to recall many of them. Two, I suppose, were very objectionable characters; one at least, my old friend, General Basil Duke.

Q. Old Basil himself was there?

A. Yes, sir; and a better man never trod leather in Kentucky, nor a more honorable man. I have known him in times of war and in times of peace, and he is, sir, a high gentleman. And another gentleman that I presume Mr. James regards as objectionable was Mr. James P. Helm.

Q. What position does he hold with the Louisville & Nashville road?

A. My impression is that Mr. James P. Helm is consulting attorney.

Q. For the L. & N.?

A. Yes, sir.

Q. The other?

A. Mr. Baskin

Q. Who is he?

A. A lawyer.

Q. The same Baskin who ran for congress upon the Palmer and Buckner ticket in the city of Louisville?

A. Yes, sir.

Q. Name the others?

A. I do not recollect the others, if the names were recalled to me—Mr. Halsey.

Q. Who is he?

A. He is a gentleman who has been in business in Louisville for many years. His last business was in connection with some coal mining operations, Jellico or somewhere. Not Jellico, but Birdseye, and for some years past has been engaged as a broker.

Q. Now, I want you to take your time and think up the other names?

A. I don't believe I could do so.

Q. How many do you think were there?

A. Not a large crowd, sir.

Q. Was Richard Knott, of the Louisville Post, there?

A. He may possibly have been; I am not certain.

Q. John Whallen there?

A. He certainly was not there.

Q. Was Allen R. Carter?

A. I must confess I really am unable to say who was there. There are some persons that if recalled to me I would recollect. Mr. Allen Carter is a gentleman with whom I have no acquaintance, but

I have seen him a few times, but have no personal connection with him. I am quite sure if he was there he gave no expressions of opinion while I was there.

Q. Out of the number that were there, out of the friends called by Governor Bradley, you now remember the names of Basil Duke, John Baskin and Mr. Halsey and James P. Helm?

A. Yes sir. Now there were others, and if I could see the list—if Governor Bradley is present and can furnish a list I might be able to name them.

Q. Did Basil Duke advise the calling out of the military?

A. I thing that Basil Duke was rather unusually silent that evening. I don't believe he gave very much expression of opinion; but he certainly did not disagree from it.

Q. Did John Baskin advise the calling out of the military?

A. I think he united in the advice.

Q. Did James P. Helm, of the L. & N., advise the calling out of the military?

A. I do not remember Mr. Helm making any specific statement, but he was not opposed to it.

Q. I will ask you if in this gathering at the conference with Governor Bradley, whether or not there was a single gentleman there present that was a supporter of William Goebel for Governor?

A. I should think not. I do not remember any if there were.

Q. Then he sought his advisors from the enemies of William Goebel?

A. I don't know about that.

Q. Don't you know it is a fact as you admitted a few minutes ago that there were no friends or supporters of Goebel present?

A. I am not aware of making any admission, because I say to you that I do not know.

Q. Do you think it was the correct thing to do for Governor Bradley to seek advice upon the question of calling out the military for a non-partisan purpose; to seek his whole advisers from the opposition to the regular Democratic ticket?

A. Really, sir, I do not believe that before this contest board I am called upon to express any opinion as to the propriety of Governor Bradley's actions.

Q. You said that the military should be in charge of the civil authorities; state what you understand the civil authority in the city of Louisville to be?

A. The opinion which I expressed to Governor Bradley upon that occasion was that he was the head of the civil authority, and that in my judgment, based upon my knowledge, or upon my opinion as to the subordinate civil authorities in the city of Louisville, that the placing of the military under their control would be worse than useless.

Q. Worse than useless?

A. Yes, sir, because I did not myself confide in their purpose to see that a fair and undisturbed election would take place. I therefore said to Governor Bradley that according to my opinion, and whether I am right or wrong remains for these gentlemen to comment upon when you come to comment upon my testimony, if you desire to do so; that according to my opinion, he being the chief civil authority in Kentucky, he would depart from his duty, be faithless to his duty, if he did not take control of that military himself.

Q. So you say, if I understand you correctly, that it would be worse than useless to put the military in charge of the civil officer, the sheriff; the civil officer, the jailer; the civil officer, the mayor, because they were Democrats, but it would be all right to put the military in charge of a Republican governor, who had been making stump speeches in advocacy of the Republican ticket?

A. Mr. James, you seem to have a habit of drawing inferences from what I say of your own, instead of repeating what I say. I said nothing of the kind, which you now repeat me as saying. Now if you desire I will give you very frankly the reasons, not because they were Democrats at all, because, while I am opposed to Mr. Goebel, I have no reason to believe that a man can not be a firm supporter of Mr. Goebel and be an honest man and non-partisan where he is called upon to perform a non-partisan duty. That which induced me to say to Governor Bradley what I said was three things (witness was here interrupted by Mr. James) Mr. James, let me say, if you please, sir, I have heard the ruling of this chairman. I slightly object to your making inferences that I intend to violate that ruling. My efforts have been, I am quite sure, to keep within the rules of the board as expressed to me. I said that the ground upon which I gave the advice, not that Mayor Weaver was a Democrat, but that it was based upon three things: Two of those things relating to past experiences which this board has directed that I shall not refer to in detail and which I do not propose to refer to in detail; and the other, and the most important and controlling influence with me, was the action taken by Mayor Weaver two days before in the proclamation which Mayor Weaver issued to the citizens of Louisville, and which I deemed to be, and which I am sure was regarded by the best people of the city of Louisville, as a deliberate threat against many of the best people of that city. That was my grounds, sir.

Q. Well, now you say that it was a quiet election in the city of Louisville?

A. I have never witnessed a quieter one.

Q. You, I believe, stated that Governor Bradley gave you a pledge that the military was not to be ordered out unless in case of absolute extreme necessity?

A. When I say "gave to me a pledge" perhaps I was a little too individual. Governor Bradley gave that pledge.

Q. Was that published in the public press of the city of Louisville?

A. I am not aware that it was.

Q. Did you communicate that to the people of the city of Louisville?

A. I didn't have anything to do with communicating it to them.

Q. That was not made public then, or general information at all?

A. Not that I was aware of. I assume that Governor Bradley believed that the people of Louisville would expect him to do his duty. I am not the keeper of his conscience.

Q. (By Mr. Hendricks.) Do you remember about the date of that proclamation?

A. I notice, sir, in Mr. Weaver's testimony here; I could not have given it very accurately from memory; I notice that in the testimony of Mr. Weaver before this board that he stated the proclamation to have been given—that it bears date on the 4th.

Mr. James resumes:

Q. Was not that proclamation published on the Sunday before the election?

A. I presume, sir, it was. I am quite sure I had seen this proclamation at the time I saw Governor Bradley.

Q. Do you not know that at a meeting of the Honest Election League that Mayor Weaver and Henry Bell, the sheriff, were called upon to confer with the audience there as to the election?

A. I never attended any meeting of the Honest Election League.

Q. Did you read the proceedings of it?

A. No, sir, I don't know that I did.

Q. The business men's meeting?

A. No, sir; I did not attend personally these meetings. The fact is, I was in the city of New York when the first meeting was called.

Q. You know nothing about Mayor Weaver and the other officials giving a guarantee to this assembly that the law would be enforced?

A. Nothing except what I saw in the public print; and by members of the League telling me. I was informed what he had said.

Q. Who was the president of that Honest Election League?

A. I don't know. My impression is it was Mr. John Stites.

Q. What position does he hold in Louisville?

A. President of the Fidelity Trust Company.

Q. Is he the same John Stites that had the conversation with Asher Caruth and said that he had raised five thousand dollars to contribute to the Taylor campaign fund?

A. I have no knowledge of any conversation between Mr. Stites and Mr. Caruth.

Q. You said there was a great strain in the city of Louisville before the election?

A. Yes, sir.

Q. I will ask you if that was not caused by the publication in the papers in opposition to William Goebel—the Dispatch and the Post—

and their incendiary articles reciting the New Orleans riot, the tearing down of the court house in Cincinnati and the murder of other people?

A. Mr. James, my opinion is that the strain and the excitement was much deeper than this and had its origin in other causes which were much deeper; had its origin in the experience of the city.

Q. I want to ask you if you read this article which I shall read to you in the daily Dispatch of Saturday morning, November 4, 1899, which paper was in opposition to Mr. Goebel, which reads as follows:

A. I say if it is in the Dispatch I did not read it.

Q. You do not read the Dispatch?

A. I never have read it. I don't think I have ever read a half dozen copies in my life.

Q. I will read it to you and ask you if you have seen it copied in any other papers.

"With the Goebelites it is 'win or have a revolution.' The people have practically no legal redress, but they have a remedy as the people of New Orleans once exercised and exercised fairly and honestly; thereby obtaining an honest result. It is this: About ten years ago the city was in the hands of an unscrupulous gang like the one now controlling Louisville. The people became satisfied of their purpose to steal the election, so a club of 1,000 of the best citizens of New Orleans—men who were not in the habit of going to the polls and engaging in riotous contests with thugs and hoodlums—after a public meeting, was formed. This club appointed a committee of ten to call on the mayor, chief of police, the police board, the election commissioners and the proprietor of the newspaper which was instigating the trouble, and informed them that they would be held responsible for any bloodshed or any irregularities on election day; that the club would be in readiness, if any violations of law occurred, to take them out and hang them. This club formed into bodies of 100 men each. One of these bodies remained all day within sight of the city hall, another in sight of the obnoxious newspaper office, and the others near the offices of the other officials. The proprietor of the newspaper saw visions of a newspaper on fire, and extras were put out urging all citizens to obey the law. The mayor and the other officials quailed at the prospect of what was evidently in store for them. They saw upon the faces of the good citizens a determination to carry out their threats.

"The result was an honest election.

"The Dispatch believes in law and order and is unalterably opposed to revolution, but it also believes in an honest election, and is equally opposed to the perpetration of a theft by any party. Therefore, we do not advise the citizens of Louisville to resort to the New Orleans method, but we can not guarantee that our advice will be taken, though we hope it will be. We are not so stupid as to even hope that disturbances will be avoided. To us they seem al-

most certain to come. The feeling amongst the best citizens was intense enough before the perpetration of the outrage of Caruth and Hoertz, but now it seems at fever heat, and unless something is done to check it we have grave fears for the lives and property of certain citizens. If trouble should arise, let the blame and odium rest where it ought to rest—upon W. R. Haldeman, Asher Caruth, Fred Hoertz, W. L. Lyons, Lee Suter and Charles P. Weaver.

"Having sounded the alarm and given this solemn warning, we feel that our duty is discharged."

Q. Did you ever see that either in the Dispatch or copied in any other papers in the city of Louisville or printed in a pamphlet?

A. I never saw it as a pamphlet, and I never saw it in any paper so far as I know. It may have been published, I do not know. I never saw it as far as I can recollect. So far as I can recall I never heard it mentioned. The fact is, the Dispatch has so little influence in the city of Louisville that its utterances would be wholly incapable of exciting a ripple of excitement.

Q. What about the Post?

A. It is an influential paper and exercises an influence in the city.

Q. It is a strong paper?

A. Yes, sir.

Q. Has a large circulation?

A. Yes, sir, quite large.

Q. Who owns the Louisville Post?

A. I am unable to tell you.

Q. Who is interested in it?

A. I am unable to state.

Q. John Atherton?

A. If he is, I don't know it. I have no knowledge of the ownership. I suppose Mr. Knott has some ownership. I know Mr. Knott used to have some ownership; whether he has now or whether Mr. Atherton owns it, I don't know.

Q. I will ask you if it is not true that the publication in the Dispatch, and the Post of such articles as the one I read to you, was not responsible for the tension, if any existed, in the city of Louisville, and the necessity for calling out the military?

A. So far as capable I have endeavored to speak with some distinctness, how far the excitement went. Of course, I know very well that exactly what the influences were that created the excitement in the minds of the people, I am not able to speak. But of one thing, I can say, the Dispatch, I do not think, would exercise very much influence. The Post is calculated to exercise an influence. But in the Post I do not remember seeing that article, or articles similar. But if you will permit me to say it, the one thing which created the deepest and intensest feeling—I am sure it was with me—was the tenor of this proclamation which was issued by Mr. Weaver.

Q. I want you to read that proclamation which created such excitement?

A. Will you please allow me to state it in my own way? What I want to say is this: I will read it or hand it to you to read, as you please. If I am going to testify before this board, of course, I must give you the grounds of these views, of course, within the limits prescribed by the committee.

Q. The question I asked you was to read the proclamation.

A. That was not your first question. Well, if you choose to vary it, I don't care. I will read it:

"To the citizens of Louisville. By virtue of the power vested in me as Chief Executive of this city, having in charge the good name, peace and order of the city, I now make this proclamation:

"It having been openly declared by certain designing persons that on Tuesday next there would be riot and bloodshed in our fair city, and such designing persons having created unjustly in the minds of our good citizens the fear that there would be an attempt to defeat the true ballot of the citizens, and by force, violence or intimidation interfere with the lawful rights of citizenship:

"And whereas threats of assemblies of armed men have been openly proclaimed to be in readiness on said day to carry out the unlawful and unholy purpose of interfering with the legally constituted authorities of our city, I now declare that I will with all the power vested in me as Chief Executive preserve the good name and the good order of our city, and the laws of our State. That no person in authority shall interfere with the legal rights of voters, and that there shall be a free ballot and a fair count, and that every officer of the election shall be protected in making a proper and honest return of the election, and to this end I shall devote all my energies. I also declare that unlawful assemblies of all kinds, that is, the assemblage of persons at the polls, will not be tolerated; that the carrying of weapons and every act of intimidation will be immediately followed by arrest and imprisonment of the persons guilty, and that at all hazards good order must and shall be maintained, and to this end I will exercise to the fullest degree the authority vested in me by law as Mayor of the city, essential to the carrying out of the purpose of this proclamation.

"I earnestly call upon all good citizens of the city to aid me in the discharge of this, my duty, promising them that there shall be no dereliction upon the part of any official in order to prevent any violence or intimidation or disorder of any kind. There is no cause for apprehension if the laws of the State and city, and the constituted authorities are properly respected.

"I further declare that the corruption at the polls, bribery of voters or attempted bribery of election officers, and every violation of election laws shall be punished and the persons immediately arrested according to law. Let the laws of the State and our fair city

be enforced, as this furnishes the only safeguard to our rights, the rights of our people.

"Given under my hand, as Mayor and Chief Executive of the city of Louisville, this the 4th day of November, 1899.

"CHARLES P. WEAVER, Mayor."

Q. Then, if I understand, you say to the committee, that the matter that created grave fear in your mind was the proclamation issued by the Mayor of the city of Louisville that has been read, that he would maintain law and order upon the election day?

A. I said that proclamation. I did not say that declaration in it.

Q. This proclamation?

A. Yes, sir.

Q. What declaration in it, did it?

A. I will give you, as far as I can, that which created apprehension in my mind. The gravest apprehension of the times is always founded very largely upon experiences,—from my personal past experience and observation before that paper was issued. I believe I said——.

Q. If I understand you, you say this paper caused the apprehension in your mind?

A. I did not say that alone caused it. I have stated that the origin of the apprehension was in matters which you object to being mentioned, and which I shall not mention.

Q. Did not you state to the committee that the alarm in your mind was caused by this proclamation?

A. I certainly did say that,—that it did create the most serious apprehension, and you requested me to state what part of it.

Q. That is correct,—what part of the proclamation created the apprehension in your mind?

A. Let me see if I understand,—what part of the proclamation, and why it created apprehension?

Q. No, sir. I asked you what part of the proclamation created this alarm in your mind that there would be an unfair election?

A. Yes, sir. I understand that question,—without stating why?

Q. Yes, sir?

A. That part of the proclamation which first declares,—let me have it, and I will read it to you. I suppose I shall have an opportunity of stating the grounds upon which I base this statement. "Whereas it has been openly declared by certain designing persons that on Tuesday next there would be riot and bloodshed in our fair city." I am asked to state the parts. It is a little difficult to state things without giving your reasons. "Riot and bloodshed in our fair city, and such designing persons having created unjustly in the minds of our good citizens the fear there would be an attempt to defeat the true ballot of the citizens, and by force, violence or intimidation, interfere with lawful rights of citizenship; and whereas threats of assemblies of armed men have been openly proclaimed to

be in readiness on said day to carry out the unlawful and unholy purpose of interfering with the legally constituted authorities of the city, I now declare that I will, ... I also declare that unlawful assemblies of all kinds, that is, the assemblage of persons at the polls, will not be tolerated." I have given them to you.

Q. Did he say "unlawful assemblies?"

A. "I also declares that unlawful assemblies of all kinds, that is," here is the definition, "assemblies of persons at the polls,"

Q. But all "unlawful assemblies?"

A. No, sir; he says that such assemblies are unlawful.

Q. Is not that the meaning of it?

A. You are now asking me for an interpretation——.

By the chairman: We can judge of the proclamation.

A. Now, I do think that it is just to myself that I should be permitted to make this statement——

By counsel for contestant: I object to any statement being made by the witness that has not been called for.

By the chairman: I think it is a very proper question. The attorney wanted to know what parts of the article Colonel Bullitt thought was most objectionable, and Colonel Bullitt stated.

By the witness: I wish to state that it is quite impossible that the members of this court could understand why that declaration of the Mayor created the feeling which I have spoken of without knowing the precise matter at which it was believed to be aimed, and to relate.

Q. Was it general information in the city of Louisville that the military was in readiness to be called out, and were remaining in preparation to act upon the election day?

Q. I should imagine sir, that it was; it was certainly known,—pretty generally known by the authorities, and that sort of thing would be very likely to spread.

Q. I will ask you if it is a fact.—true, that information going out that Governor Bradley had refused to go to fill an appointment to speak at the Auditorium in the evening a day or two before the election; the fact that he was staying in command of the military; the fact that he had been making speeches for Mr. Taylor,—did not have an effect, he being in command of this military, and the belief that it would be brought out over the city to intimidate and to overawe Democrats, and those that were intending to vote the Democratic ticket, and did not have the effect to tighten up the courage of the Republicans in that city?

A. I do not believe sir, that the Democrats of Louisville, or any other people of Louisville, were affected in the slightest degree by any fear of intimidation of that kind. Nor do I believe that the declaration of Governor Bradley that he would see that the law was observed was in the slightest degree calculated to deter voters, more than the declaration of Mr. Weaver that there was no reason to

believe that riot and bloodshed would occur, would have that effect. My belief is,—my own conviction is this: That the presence of the military repressed but one class of people; that class was the lawless class; was that class that would have interfered in my opinion, with the election,—would have produced riot that day to the everlasting shame of the city, if it had not been known that the military would suppress it.

Q. Do you mean to say that there is any difference between the police force under the control of the civil authorities, and the military standing ready to act?

A. I believe there is a good deal of difference in the effect.

Q. You would not say that one would have as much effect as the other?

A. I have the opinion,—you are asking me for my opinion,—that the presence of the military in the armory repressed the lawless class and did not affect in the slightest degree the law abiding class.

Q. And you believe that the lawless class was the Democratic party, and all the law abiding class was represented by the Republican party?

A. On the contrary, Mr. James, I believe that there is in the Republican party in the city of Louisville a most vicious class of people; an extensive class of people and a very dangerous class of people. I know that the Democratic party controls an equally vicious class. I do know that there was the most serious danger of a clash between those two classes of people. I do know that there was danger of a clash, in the first place, between men of high character, who Mayor Weavor threatened to drive from the polls, and who would not have stood it for a minute; and there was equal danger of a clash between the vicious of both parties. I make no such statement as you continuously assume that I do make.

Q. You have stated there were 275 precincts?

A. I don't remember.

Q. Is there not 176?

A. I don't know; you may be right. My recollection is——. I may make an error on that subject at any time.

Q. What is the number of the police force?

A. Mayor Weaver in his deposition gave it as 275.

Q. Any extra police sworn in on that day?

A. He says in that deposition that there were, and I understood that there were. I regard that character of men, the men usually sworn in,—it is the worst class, and it was a most serious threat to the good order of that city. This special police made far more serious the condition, in my mind, because they are taken from the very worst class. Among the regular police we have some fine men.

Re-examined by Mr. Sweeney:

Q. You stated in response to question asked upon the other side

that you had been in Europe about a month—four days: How long did you serve in the Confederate army?

A. I joined in 1862, and staid until the end of it.

Q. You were asked about General Duke. He served through the Confederate Army?

Objected to, sustained, exception.

Q. You spoke of a number,—some gentlemen that were present at a conference with Governor Bradley at the Galt House with regard to the calling out of the military; I will get you to state whether or not gentlemen were not going and coming?

A. I don't remember about that.

Q. Was Mr. Muldoon present?

A. I think probably he was.

Q. You remember Mr. Tom Langdon?

A. He was there. Yes, sir, I am sure he was.

Q. Judge Harris?

A. I think he was. I am inclined to think he was; I can not be positive.

Q. Capt. Lewis Haas?

A. I don't know him. A number I didn't know.

Q. Quite a number you didn't know?

A. Yes, sir. quite a number.

A. B. Patrick, being duly sworn and examined by Governor Bradley, deposed as follows:

Q. Where do you reside, Mr. Patrick?

A. I live in Magoffin county, near Salyersville.

Q. Were you in that county on the day of election?

A. Yes, sir.

Q. Were you an officer of the election?

A. No, sir.

Q. Were you in the voting booth on that day?

A. Yes, sir.

Q. Did you vote?

A. Yes, sir; I voted.

Q. Did you see the ballots that were being used on that occasion?

A. Yes, sir.

Q. Did you or not notice to see whether your stencil mark could be seen through the ballot after you folded it?

A. Well, the ballots in our county were very thin.

Q. Yes, we understand that; after it was folded now, could you see the stencil from the outside?

A. Well, I really don't know; I believe, though, that you could see by holding it up that way.

Q. Between you and the light?

A. Yes, sir.

Q. But ordinarily, I mean laying it down on the table, or putting it in the box?

A. Where it was just folded once, I believe that you could.

Q. How did you fold your ballot up there; did you fold it more than once?

A. Yes, sir; I think so. I think I folded it twice.

Q. Well, I am speaking now about when the ballot was properly folded; could you, or not, see the stencil mark except when you held it between you and the light?

A. Now, in folding the ballot—I think the ballot was folded four times, if I am not mistaken.

Q. You say—

A. The ballot was folded four times, and after it was folded that many times, I don't think you could see through the ballot.

Q. When did you hear a discussion about these ballots?

A. I never heard anything said at all until after the election was over.

Cross-examined by Mr. McQuown.

Q. Do you know how anybody else folded the ballot, except the one you had, Mr. Patrick?

A. No, sir.

Q. You just speak of the way your ballot was folded?

A. Yes, sir.

Q. How did you fold your ballot?

A. I think I folded the ballot—I believe it was four times, if I am not mistaken.

Q. You saw nobody else's ballot, and don't know anything about how the balance of them were folded?

A. Well, there were others at the same time—we had several booths; I could see them place them in the box.

Q. But you paid no attention to the way they were folded, however, did you?

A. Not to amount to anything.

Q. Look at this ballot, Mr. Patrick, and see if that, you think, is the same kind of ballot used in Magoffin county at the last election?

A. Well, it looks like the same kind of a ballot.

Q. See if the name of the clerk is not upon the back of it—your county clerk, I mean?

A. Yes, sir; the name is there.

Q. Mr. Minnix is your county clerk?

A. Yes, sir; Mr. Minnix is our county clerk.

Q. Now, how did you fold your ballot, Mr. Patrick?

A. I don't know exactly how the ballot was folded. I believe, though, it was folded about that way (indicating.)

Q. You think you folded it up as small as that?

A. I think so, that is my impression at this time.

Q. Can't you see very distinctly all the printing through that when it is folded as you have it now, without holding it between you and the light?

A. I can see it—yes, sir.

Q. Now, when it was folded in that way, that you have indicated, is that the way you handed it to the election officer?

A. Well, I am not right certain whether it is, or not; but I believe it is.

Q. Well, then, how did you tear the secondary stub off of it without unfolding it—wouldn't he have to unfold it in part, Mr. Patrick?

A. Let me see if I can double that ballot the way I think it was; I am not positive about it.

Q. Isn't it a fact, Mr. Patrick, that the officer laid it down that way in order to tear the secondary stub off of it along here, and then put it in the box—isn't that the way?

A. I think maybe it was doubled in that direction, if I am not mistaken, and torn off that way.

Q. Then the way you say first is not correct, your statement about it at first—it wasn't folded so many times?

A. Well, when it went in the box it was, but in tearing this off it was not.

Q. It had to be folded one time less than you first stated it?

A. Yes, sir.

Re-direct examination by Governor Bradley:

Q. You can't see the stencil mark on it now, that way?

A. Yes, sir; I could see it.

Q. You think you can see it here?

A. You mean in the device, is that what you mean?

Q. No, sir; I was talking about the stencil—the mark of the stencil; now, could you see that when it is folded in that way?

A. No, sir; I could not.

Q. You mean, you could see the shape of the device?

A. Yes, sir; but I could see a stencil mark in one of those squares here.

Q. By close examination, or easily?

A. Well, I could very easily see it.

James Sowards, being duly sworn and examined by Governor Bradley, deposed as follows:

Q. Mr. Sowards, what is your name and place of residence?

A. My name is James Sowards; I reside at Pikeville, Pike county, Kentucky.

Q. What is your occupation?

A. Attorney-at-law.

Q. Do you hold any position in that county?

A. County attorney of Pike county.

Q. I will get you to examine this ballot and state whether that is the character of ballot that was voted in your county at the last election?

A. Yes, sir; I recognize this as being one of the official ballots used in the November election, 1899, in Pike county.

Q. Did you notice the ballots that were used in your county, any number of them?

A. Yes, sir; I had occasion to look at all of them when the ballots came, some few days before the election, and afterwards I was inspector in my own precinct, and I examined all the ballots that were cast in that precinct.

Q. When did you first hear any complaint about the ballots being thin?

A. It was about ten days after the election; never heard any complaint until that time.

Q. Could you, or not, tell how ballots were voted on the day of the election, from the outside of the paper?

A. I could not; I helped to count the vote in my precinct, but I could not tell how any ballots were voted at all, that were unfolded.

Q. Did you hear anything said about the ballots being too thin, on that day?

A. I heard no complaint then among any of the election officers or inspectors. I read something in the report of a witness from the county that imputed something to me, that I would like to explain.

Q. Well, sir, certainly you have a right to explain anything that has a reference to you.

A. One Mr. Stephen Osborne said something—I don't just remember now what it was—I noticed he mentioned my name in his testimony—yes, sir; I remember now. I was up a railroad precinct 18 miles from Pikeville on the morning of the election, and Mr. Osborne was one of the judges of the election, and Mr. John Hopkins was the other judge. There was a man by the name of—it was Sol Osborne, I think it was, he was drinking, and was about to raise a disturbance—he was a brother-in-law of John Hopkins, one of the judges, and I called to John Hopkins from out in the ground—we were voting in the open air—and asked him if he could not try and settle his brother-in-law; he is a bad man, and had a pistol, and was raising a row, and I asked him if he could not settle him, and he did ask him to be quiet. That was the only conversation that I had with Mr. Hopkins that day, and it had nothing to do with the election whatever or anything of that kind.

Cross-examination by Mr. McQuown:

Q. You say you are county attorney of Pike county?

A. Yes, sir.

Q. What is your party affiliation?

A. I am a Republican.

Q. What position did you hold on election day, did you say?

A. I was inspector.

Q. You went in at the time the polls closed?

A. 4 o'clock.

Q. To help count the ballots?

A. Yes, sir.

Q. You were not in there during the voting?

A. No, sir.

Q. You don't know whether the others looked to see how the persons had voted through this thin ballot, or not, do you?

A. No, sir; I don't call it a thin ballot—I don't call it a thin ballot.

Q. Well, whatever ballot it was, you don't know whether they looked to see how the voters had voted or not, do you?

A. No, sir; I don't know anything about it except my own ballot.

Re-direct examination by Governor Bradley:

Q. You examined the other ballots in the count?

A. Yes, sir; I examined all of them that were cast, about 200 at our precinct.

John D. Jarvis, being duly sworn, and examined by Governor Bradley, deposed as follows:

Q. Where do you live, Mr. Jarvis?

A. I live in Knox county.

Q. What is your name?

A. John D. Jarvis.

Q. What position did you hold up there at the last election?

A. I was one of the Election Commissioners.

Q. In making the count of the vote up there as one of the commissioners did you or not count all the votes for the Democratic party that was polled for them—all the votes?

A. Yes, sir; all that we could ascertain as to how the voter intended to vote; I think there were a few ballots that were spoiled that came in, but we counted every vote that any man received that we could ascertain the intention of the voter in regard to it.

Q. There was no contest or controversy among you as to any ballots there, was there; that is, these that you speak of being mutilated, did you all agree that they were mutilated or not?

A. Yes, sir.

Q. And you gave to each party all the votes that they got that you thought was intended to be voted for them?

A. Yes, sir; there was no dispute amongst us in regard to a thing like that.

Q. Did you sign that certificate because you were scared, Mr. Jarvis?

A. No, sir.

Cross-examination by Mr. McQuown:

Q. You were the Republican commissioner, were you?

A. Yes, sir.

S. C. Ferguson, being duly sworn, and examined by Governor Bradley, deposed as follows:

Q. Your name is what, sir?

A. S. C. Ferguson.

Q. Where do you live?
A. Prestonsburg, Floyd county.
Q. What is your business there?
A. Attorney.
Q. Attorney-at-law?
A. Yes, sir.
Q. Were you an officer of election at the last election?
A. No, sir; I was not.
Q. Have you got a Floyd county ballot?
A. Yes, sir; got two.
Q. Well sir, I will get you to state whether or not the stencil mark on this ballot could be seen from the outside?
A. Well sir, I don't think it could be if folded properly.
Q. Well, suppose it is folded once?
A. If it is folded once, you could see it.
Q. Could you or not see the device when it was folded once?
A. Yes, sir; they were folded once in our precinct in Prestonsburg—just folded this way exactly.
Q. That is the way they were brought in?
A. Yes, sir.
Cross-examined by Mr. McQuown:
Q. What did you say was your business?
A. Attorney-at-law?
Q. Live at Prestonsburg?
A. Yes, sir.
Q. Were you an officer of election?
A. No, sir; I was not.
Q. Had nothing to do with the election except you voted, I suppose?
A. Yes, sir; I voted.
Q. When you voted, how did you fold your ballot?
A. Well, the clerk folded the ballot himself.
Q. Well, how?
A. Well, just one time, just this way; the clerk, when I called for my ballot, he folded it that way and handed it to me as two or three others did at the same time, and I went in and put my stencil mark under it, and brought it back with me and gave it to the judge of election and he deposited it in the ballot box.
Q. What did he do with it when you gave it to him?
A. He tore the secondary stub off and put it in the ballot box.
Q. How did you fold it?
A. Just like the clerk had folded it, just one time.
Q. All you know about it then is your own ballot—the ballot you voted yourself?
A. Yes, sir.
Q. You say, when properly folded, it could not be seen?
A. No, sir; it could not.

Q. Where did you get these ballots?

A. Mr. G. R. Davidson, the county court clerk, gave them to me to-day.

Q. Where is he?

A. He is down at the hotel, I suppose; he was in town to-night.

Q. What political party do you affiliate with, Mr. Ferguson?

A. The Republican party.

Q. (By Governor Bradley.) Those ballots have not been voted?

A. No, sir.

Q. (Mr. McQuown resumes.) What political party did you say you affiliated with, Mr. Ferguson?

A. I am a Republican.

Re-direct examination by Governor Bradley:

Q. Will you please mark your name on those two ballots, so as to identify them?

A. Yes, sir.

Q. You say you got these ballots from the clerk of your court; what is the politics of the clerk of your court?

A. Democrat.

William Dingus, being duly sworn, and examined by Governor Bradley, deposed as follws:

Q. Where do you live, sir?

A. Floyd county.

Q. What is your name?

A. William Dingus.

Q. Have you ever held any position of trust?

A. Yes, sir.

Q. What was it?

A. State Senator?

Q. From that district?

A. Thirty-third Senatorial District.

Q. Were you present in Floyd county on the day of the last election?

A. Yes, sir.

Q. Did you see the ballots that were voted there that day?

A. I saw some of the ballots.

Q. How many did you see?

A. Two or three.

Q. Could you, or not, see the stencil mark through those ballots?

A. I could see the stencil mark on the ballot that I had as I handed it in.

Q. How many times was your ballot folded?

A. I folded mine as I received it from the clerk, took it in the booth, marked it, left it folded once; so did the others that I saw vote about the time that I did.

Cross-examined by Mr. McQuown:

Q. You simply voted; and these other ballots that you saw, you saw while you were in the voting place?

A. Yes, sir.

Q. You paid no attention to the others, I suppose?

A. No, sir; not particularly.

Q. Only barely saw that the other persons were voting?

A. Saw that they were going in just as I did.

Q. What party do you affiliate with, Mr. Dingus?

A. Republican party.

E. L. McDonald, being duly sworn, and examined by Mr. Sweeney, deposed as follows:

Q. Mr. McDonald, you reside in the city of Louisville, I believe?

A. Yes, sir.

Q. What is your business there?

A. Lawyer.

Q. Were you born and raised in that city?

A. Lived there all my life—yes, sir.

Q. Are you well acquainted with the city?

A. Pretty well; as well as one would be that had lived there that length of time, I think.

Q. What is your age?

A. 29.

Q. Were you a member of what is known or called the Honest Election League in the city of Louisville?

A. Yes, sir; I helped to organize it, and I am proud of my connection with it.

Q. Have you a list of the members of the Honest Election League of the city of Louisville?

A. No, sir; I haven't a list with me. I think the list contains possibly over four hundred, or a thousand names.

Q. What class of citizens?

A. The very best citizens in the community, I think.

Q. Will you, or can you procure a list of the names of the members of the Honest Election League of the city of Louisville, and file it before this board?

A. I will endeavor to get it on my return to the city, and mail it.

Q. To the clerk?

A. To the clerk.

Q. Mail it it to me, and I will file it, instead of the clerk?

A. All right.

Q. Well, state what action the Honest Election League took, if any, to procure an honest election—honest and fair election in the city of Louisville the last election, and what kind of an election you had there?

A. The Honest Election League was organized rather early during the campaign, during the last campaign. Its organization

was thought necessary by a good many of the good citizens of the town, from the recent experience——

Objected to.

A. The object was to get an organization for the purpose of seeing that a perfectly honest and fair election, as near as could be, should be had. It was understood by those that were organizing it, that it had been threatened that the election would be carried some way, or that the city would be carried in one way, no matter how the votes were cast.

Q. Which way was that?

A. That was for William Goebel. I, myself, was a candidate in the primary of June 12th, but I won't go into that as explaining my experience, but it was intended to protect ourselves against any outrage in the election that the League was formed; and we intended at the first to organize it among all parties. We did invite Republicans, Democrats—Goebel Democrats and Brown Democrats both—to joint the organization; I must say that very few Goebel Democrats availed themselves of the opportunity; and on the day of the election there were some thirty or forty precincts which were known as the worst precincts in the town, or at which intimidation had been theretofore practiced——.

Objected to.

A. On that day there were about thirty or forty precincts attended by the members of the Honest Election League—different members were asked to attend these precincts; those are precincts where the vote was largely the negro vote, and with other friends—to get a few of our friends, and to go there and watch the election. I haven't with me now, but I have—yes, I have now, a copy of the instructions that we gave to the Honest Election League workers for their guidance on that occasion.

Objected to.

By Judge Yost: We waive that.

A. On that day I myself attended, with a half a dozen gentlemen, including several lawyers and several doctors, at one of the precincts on Walnut street near Tenth, and remained at the polls all day until the count was completed, watching the conduct of the election, and seeing that no intimidation was practiced on the ignorant voters, and doing all in our power to see that the election went off quietly. I will say that there was obstructions at that place—considerable obstruction on the part of the Democratic officers, who were apparently aided by the police, both the police—.

Objected to.

Q. Well, were you there at that voting precinct?

A. Yes, sir; I was there all day, except the time that it took to go to my own precinct to vote.

Q. Did you see any soldiers at that precinct that day?

A. No, sir; I didn't see any, nor anywhere else.

Q. Were any soldiers upon the streets?

A. No, sir.

Q. There was no intimidation there, except as you have indicated?

A. Except by the Democratic officers and workers, and policemen.

Q. Now, you have stated that the Honest Election League was organized for the purpose of seeing that there was a fair election held in the city of Louisville, so far as was within your power. I will get you to state to the Committee for what reason, and upon what grounds you had a right to believe that the organization of such a league was necessary?

Objected to, sustained and exception.

Q. Then I will ask you what was the state of mind of the public in the city of Louisville in regard of the election to be held that day, so far as your knowledge goes?

A. I have never been through a period of such intense feeling in my life in any place; of course, I have lived there only, but I never saw the feeling so intense as it was. Our side, and what I mean by our side, I was a Brown Democrat myself, did not propose to be run over in the election, and we were going to do what we could to prevent it. We were equally certain that the other side would attempt something of that sort, unless prevented in some way. It was a serious question with us as to whether we would organize in armed bodies for our protection at the polls; and for that reason I, with a good many friends—with a good many others, was very earnest in wishing that the Governor would have the militia in readiness so as to prevent any rioting. When on the day before the election it was understood that the militia would be so held in readiness, we all agreed, although it had not been decided to go armed, we agreed that it was the best policy not to go so armed, so we did not carry any arms, but had it been otherwise, I intended to go prepared to defend myself and protect myself, and I think a good many others of the League would have gone the same way.

Q. Now, I will ask you this question; what was it that caused you people to have the apprehension of trouble that you did have?

A. Well, it was the trouble that we had previously had in the June Primary——

By the Chairman: Never mind that; there is no contest here about the June Primary, that I know anything about.

Q. Well, in your judgment, was it necessary that the militia should be called out at that time, or should be in readiness for action on that day? I will put the question that way.

A. I think it was very necessary for the safety of the city.

Q. I will get you to state if you know of a single, solitary voter in the city of Louisville that was intimidated or deterred from

going to the polls and casting his ballot as he saw proper upon that day by the armed presence, or the presence of the military in that city?

A. I do not; it is absurd to say that any one was so prevented.

Q. I will get you to state whether or not, in your judgment, a great many voters of that city did go to the polls upon that day, who would not otherwise have gone had the they not known the military was there to preserve order?

Objected to.

Thereupon the board adjourned until Monday, January 22, 1900, to 2 o'clock P. M.

Frankfort, Ky., January 22, 1900.

The board met pursuant to adjournment at 2 o'clock P. M.

E. L. McDonald, being duly sworn and further examined by Mr. Breckinridge, deposed as follows:

The objection to the last question was overruled by the board.

A. I seriously believe that unless the military had been there to preserve order that the election could not have been carried on, and a great many people would have been deprived of their right to vote.

Q. Will you please state to the board—the Boards of Contest—whether in your judgment, and give the facts upon which you base that judgment, the military ought to have been ordered to assemble at its armory?

A. I do. There was a very serious apprehension in the minds of the people that there would be disorder and rioting on that day. As I said before, myself and a good many with whom I conversed, that the administration party would attempt to control the election by force, if necessary, through the means of the police and other forces at their command, and we determined to do all in our power, even to the extent of resisting by force, to prevent it. On the Sunday before the election, the proclamation of Mayor Weaver was published in the Courier-Journal, in which he stated that threats had been made of armed assemblies on election day, and in which he announced his purpose to arrest all unlawful assemblies at the polls, which he qualified by saying, that is all assemblies of men at the polls, and we undertood that to be a direct threat to the members of the Honest Election League who had made their arrangements to go to the polls, exercising their rights in a peaceable manner, to see that the election was honestly and fairly conducted. When that threat was made we were afraid that he intended to carry it out, and if he had attempted to arrest the bodies of Honest Election League men who were at the polls, we thought there would undoubtedly be a conflict, resulting in bloodshed and riot, and that the presence of the militia was necessary in order to prevent any such rioting, or put it down if it should arise.

Q. Were you present at any time in any conversation with

Governor Bradley as to whether he would or would not order the assembling of the First Regiment at its Armory?

A. No, sir; I was not.

Q. You were not one of those present?

A. No, sir.

Q. Were you a candidate for election on the 7th of November?

A. Yes, sir; I was a candidate for the office of councilman for my ward the 7th ward of city of Louisville, and I had been previously a candidate in the Democratic primary to nominate Democratic candidates to be voted at that election, which primary was held on June 10th—I think it was.

Q. Was there any candidate opposed to you at the election of November 7th for the office for which you were running?

A. Yes, sir; there were two candidates opposed—there were two sets of candidates opposed, the candidate on what was known as the Goebel Democratic ticket, and also the Republican candidate.

Q. Were the candidates who were on what you have called the Goebel Democratic ticket on June 7th the same candidates who were opposed to you in the primary of June 10th?

A. Yes, sir; one of them at least was.

Q. Was there any interference and if so, what, by the police of the city of Louisville in the primary of June 10th.

Objected to. Objection sustained.

Whereupon counsel for contestees, excepting to the decision of the board, avow that if permitted they will prove by this witness and by other witnesses whom they expect to introduce that on June 10th (or 12th,) 1899, Charles P. Weaver, who was a witness before this board, who was then Mayor of the city of Louisville, and W. L. Lyons, R. Lee Suter, and Mr. Tierney, then constituting the Board of Public Safety, and Mr. Henry Bell, then Sheriff of Jefferson county and Major Jacob H. Haager, then chief of police, and the police force, in substance the same as on November 7th, interfered with the primary election called by the constituted authorities of the Democratic party for the purpose of nominating candidates for the Board of Alderman, the Board of Common Council, for the Legislature, and other offices to be filled at November 7th, improperly and unlawfully took possession of the polls, improperly and forcibly took possession of the ballot boxes, illegally and forcibly arrested citizens discharging duties as officers of said election, and violently broke up said election, took possession of the ballot boxes, and kept possession thereof, and that those same parties were filling the same offices respectively on the 3d, 4th, 5th, 6th and 7th of November, 1889, said Charles P. Weaver, being the same person whose name is signed to the proclamation of the Mayor heretofore given in evidence, and that at that election there was a ticket to be voted for known as the administration ticket for Board of Aldermen and Councilmen.

By a committeeman. There is a portion of that that I think is competent, but a portion of it is not.

By. Colonel Breckinridge. And the counsel for contestees hereby not only except to the decision of the board declining to allow such testimony to be entered, but also respectfully ask leave to enter this as a protest with the request that this avowal and prote t be returned to the two houses of the General Assembly of Kentucky with the report of these boards that said houses may act upon these motions.

Counsel for the contestants desire the record to show that they object to this line of inquiry for several reasons. In the first place, because no foundation was laid for any of these questions during the cross examination of any of the witnesses from the city of Louisville, although the cross examination of the Mayor, the chief of police, and a member of the Board of Safety was indulged in; that no foundation whatever in the manner prescribed by law was laid upon any of the subjects mentioned in the avowal. Counsel further avow that they were ready to prove and would have proved by these officers, if allowed by this board, and were prevented from proving by the objection of the gentlemen on the other side, of counsel, that the occurrence of June 12th, 1899, was an effort by what is known as the Whallen Gang of the city of Louisville to unlawfully and forcibly break up a Democratic primary, and that the police were only used for the purpose of suppressing these lawless characters, and for no other purpose, and to prevent them from stealing ballot boxes and stuffing ballot boxes, and for no other purpose; and further, because the pleadings in this case do not raise any such issue—I mean by pleading, the notice and counter-notice.

Q. I will ask you who was the Mayor on June 10th, at the time of the Primary of June 10th?

A. Charles P. Weaver.

Q. Who constituted the Board of Safety?

A. W. L. Lyons, Lee Suter and Ed. Tierney.

Q. Who was then the sheriff of that county?

A. Henry Bell.

Q. Who was the chief of police?

A. Jacob H. Haager.

Q. Has there been to your knowledge any change of importance in the police—force of police from that time to the 10th of November.

A. No, sir.

Q. Was the conduct of the police at that primary in June when these officers were in the respective offices named one of the reasons for your belief that the military ought to be called out?

Objected to; objection overruled.

A. It was; and fear that they would act similarly on this occasion.

Q. Do you know what was the conduct of the police in the city of Louisville at the election—primary election in June?

A. Yes, sir; I know in a general way that there was a concerted action on the part—

Objected to.

Q. Will you please state to the board whether at the election in June, the conduct of the police was such—what was the conduct of the police as to keeping order and preserving the peace?

Objected to by a committeeman, who stated that the question did not come within what the board thought was proper.

Q. What in your judgment, according to your knowledge of the public mind, was the state of the public mind of Louisville on November 7th as to the willingness and purpose of the mayor, the Board of Safety, and the police of Louisville to keep the peace at the election and having a fair election, as based upon their former conduct?

By the Chairman. As a matter of his knowledge.

A. I think the people of Louisville have confidence in the integrity of their officials on ordinary occasions to preserve the peace and to perform their duty, but in a matter when their offices are in danger, and where there is great party contention, they are apt to use their offices and any power that might be at their command in order to obtain party success and the impression was general at that time that their powers would be so used during the election on November 7th.

Q. Were there not that, according to your knowledge, based in any degree upon their conduct at the June eletion?

Objected to.

Q. Upon what was it based?

Objected to; objection overruled.

A. From the knowledge of past experience, part of that past experience, as I have stated before, being the experience in the primary of June previous.

Cross Examination by Mr. Phelps:

Q. Did you say you were a candidate at the last election in November, 1899?

A. Yes, sir.

Q. Out of the 33,000 votes cast in Louisville, how many did you get?

A. I don't know.

Q. Did you get as many as 300?

A. Yes, sir.

Q. Will you tell the gentlemen of the board how many you got; about how many?

A. I have answered that I don't know.

Q. Is it possible that you ran a race there and you haven't any idea how many votes you got in that election—you have no

idea approximately how many—can't you give within 500 of how many you got?

A. Yes, sir; I can.

Q. Give us the guess?

A. About 2,000.

Q. Out of 33,000; you got a good many less than 2,000 didn't you?

A. I don't know accurately how many I got.

Q. You never took enough interest in the election and the result to ascertain how many votes you got?

A. I knew I wasn't elected.

Q. And you knew you were really not a candidate; didn't you?

A. I don't know what you mean by not being a candidate.

Q. In other words, was your name not used in connection with others for the mere purpose of creating confusion and as a decoy; and were you in good faith a candidate?

A. I didn't allow it to be so used, and I was in good faith a candidate?

Q. And you then being in good faith a candidate, you can not give this board a statement of how many votes you got? Out of the 33,000 cast in the city?

A. I have answered that.

Q. You have answered by saying you can't give it?

A. Yes, sir.

Q. You are a member of a law firm of Wallace & McDonald?

A. Yes, sir.

Q. The senior member of your firm is Mr. Arthur Wallace, is he not?

A. Yes, sir.

Q. Is he the same Mr. Arthur Wallace that was here a bondsman upon the bond of John H. Whallen, who was arrested on a warrant in the city of Frankfort for attempted bribery?

Objected to; objection sustained.

Question withdrawn.

Q. I will ask you whether or not the firm of Wallace & McDonald during the two or three months prior to November last were the attorneys of John H. Whallen?

Objected to; objection overruled.

A. We have been attorneys of Mr. John H. Whallen at different times; I don't recollect that he had any business pending for him during that time.

Q. You were his attorneys prior to the election?

A. We have been his attorneys.

Q. You are still his attorneys, are you not?

A. I don't think—

Q. In a great many matters?

A. I don't think we represent him in any matters now at all. I don't recollect.

Q. I understood you in your direct evidence that you were one of the gentlemen who inaugurated or organized the Honest Election League of Louisville?

A. I assisted in organizing it.

Q. Your partner, Mr. Arthur Wallace, was the secretary of that League, was he not?

A. He was.

Q. He also took an active part in the organization?

A. Yes, sir; he was one of the organizers.

Q. How many times during the organization of the Honest Election League were you or your partner, Mr. Arthur Wallace, in conference with John H. Whallen of Louisville.

A. I never was in conference with him on the matter.

Q. Were you in the Buckingham Theatre during the month of October?

A. No, sir; I was not.

Q. Was Mr. Whallen at your office?

A. I don't think he was; I don't recollect his being there at all.

Q. How many times was your partner at the Buckingham Theatre during the month of October?

A. I don't know that he was there at all.

Q. How many sub-stations or meeting places did the Honest Election League, so-called, have in the city of Louisville before the election?

A. I don't know that accurately, but they had several around in different sections of the city.

Q. They had a headquarters in various portions of the city, did they not?

A. I think so.

Q. Did they have a private wire and a private telephone running from these headquarters to any place?

A. I don't know of that; I never heard of it.

Q. Don't you know that each of those places had a private wire running from the headquarters of the Honest Election League to the Buckingham Theatre?

A. I do not.

Q. Can you say never heard of it?

A. I don't know any thing about it more than what I have seen in the Courier-Journal.

Q. I observe that you bear down on the words "Don't know." I ask you if you don't know as a matter of current history in the city of Louisville, that these various meeting places of the so-called Honest Election League, organized by the firm of Wallace & McDonald, the attorneys of John Whallen, had private telephones running from the various headquarters into the Buckingham

Theatre? The place of John H. Whallen in Louisville?

A. I object to your inferences, and I have no knowledge as to the facts that you ask me of.

Q. You have told a good deal about what your impressions were and what you believed to be the fact. I now ask you if you have not an impression, and if you do not know as a matter of common rumor and history, that such was the case about these private wires?

A. I said I didn't know anything about it more than what I seen in the Courier-Journal.

Q. Did you take no trouble to investigate it?

A. That was not a matter that interested me; I don't believe everything I see in the Courier-Journal.

Q. I want to know of you whether Mr. Frank McGrath was a member of the Honest Election League?

A. I don't know whether he was; or not.

Q. Do you know whether John Feeney was a member, or not?

A I do not?

Q. Do you whether Mr. McElliott of Louisville was a member or not?

A. I don't know.

Q. Do you know whether Frank Dugan was a member or not?

A. I don't know that.

Q. You don't know then who the members were?

A. I think Mr. Dugan worked with the Honest Election League on the day of the election.

Q. Will you tell the gentlemen of this commission who Mr. Frank Dugan is, as he worked with them and was interested in the Honest Election League?

A. He keeps a saloon on Eleventh street somewhere; I don't know him personally.

Q. Can you tell us anything about his connections and affiliations and associations for the past two years in Louisville?

A. No, sir; I do not. I only came in contact with him as a witness in some cases that were being prosecuted in the city court.

Q. Do you not know as a matter of fact that Mr. Frank Dugan is one of the hangers-on at the Buckingham, and one of the so-called strikers for the Buckingham gang?

A. I don't know that as a matter of fact, or any other way.

Q. You have no knowledge on that subject, or never heard of that before, did you?

A. I never saw him there. I am not familiar around the Buckingham, and I don't know who hangs on there.

Q. I understood you that yourself and other gentlemen connected with the so-called Honest Election League determined that you would arm yourselves?

A. I didn't say that.

Q. You didn't say that?

A. I did not.

Q. The stenographer didn't report you correctly. I didn't hear you, but I read it. Did you say that you others had made a determination that you would arm yourselves on election day?

A. I said that we were seriously considering it; we hadn't determined to do so positively, though.

Q. When were you making that serious consideration—at what meeting?

A. Well, I didn't mean to say that the Honest Election League as an organization was considering that. I merely said that I with some others was thinking of it I don't know as an organization whether any action was taken on that.

Q. Will you give us the names of those others who considered that subject seriously with you?

A. Well, I had talked with my friends on various occasions.

Q. Give us the names of any gentlemen that seriously considered that subject of arming themselves.

A. Mr. Robert Cochran, Mr. John I. Calloway, Mr John Miller and a great many others with whom I came in contact.

Q. Can you give any other names?

A. I might give other names, but I don't recollect everybody.

Q. Did your partner, Mr. Arthur Wallace, come out in a statement, in the paper, advising the Honest Election League to take Winchester rifles and go to the polls with them on election day?

A. I think not.

Q. Did you see anything of the kind?

A. I saw no such article as that.

Q. Did you see anything on that subject?

A. I saw an article written by him some time very early in the campaign and shortly after the June primary, in which he advocated the people to protect their rights by force, if necessary, against a petition of those outrages.

Q. What did he say about rifles and shotguns?

A. I don't recollect anything about them.

Q. You stated in your testimony given on Saturday, if I remember it correctly, that the Honest Election League was made up of the better people of the city of Louisville. Is that what you meant to say?

A. Yes, sir; of the better class.

Q. What do you mean by the words "better people;" what does that mean?

Q. You stated in your testimony given on Saturday, if I read it correctly, that the Honest Election League was composed of the better class of people of Louisville. What do you mean by the better people? My question was, what do you mean by saying

that the better people of the city of Louisville were members of the the Honest League?

A. I mean by all the citizens of the better classes as they are generally termed, men of integrity, and some property, of influence and good standing in the community generally.

Q. What do you mean by the better classes?

A. I mean to draw no distinction between classes?

Q. You use the expression "better classes?"

A. It was an inadvertence.

Q. Do you mean, however, to give it out to the public, to the people of Kentucky, that the better people are those amongst the better class of Louisville, were amongst the members of the Honest Election League?

A. I do not; there were a good many good men who were not members sof the Honest Election League.

Q. Were all of the members in your so-called Honest Election League of the better people of Louisville?

A. I do not put them all in.

Q. All the people in the Honest Election League were of the better class, were they not?

A. I did not say that the better class of people composed the Honest Election League; or that it was composed in all of men of the better class; but that the better class of citizens organized and composed the Honest Election League.

Q. All the better class of citizens were not members of your organization?

A. No, sir.

Q. In fact amongst our 250,000 people of inhabitants, what proportion of the better class were in the Honest Election League?

A. I do not understand just what you mean.

Q. Will you give me some idea of what is the better class?

A. You might divide them indefinitely.

Q. How many of the better class did you have in your Honest Election League—what proportion?

A. A small proportion of all of them.

Q. Now, do you know Major R. C. Davis?

A. I do.

Q. He was a member of the Honest Election League?

A. I think he was.

Q. He resigned did he not?

A. I never heard of it.

Q. Don't you know that at that very meeting that you are now talking about that when it was stated in the hearing of Mr. R. C. Davis, who is a reputable lawyer, that it was proposed and the intent, of your body to arm yourselves if necessary and go to the polls that he at once resigned and said that he would have nothing to do with the movement?

A. I never attended any meeting of the League when he announced that.

Q. I ask you if anything of that kind occurred on the part of R. C. Davis?

A. It did not. I was present. I think Major Davis was a member of the executive committee of the Honest Election League and I was permitted to be present at one of their meetings at which he was also present. My recollection is it was stated that there would be no arms used by the members; I think that was probably the last meeting before the election. And there was also something said about employing the means of the Federal authorities, when he stated very positively that he did not approve of that, and would have nothing to do with a movement of that kind; and out of deference to his opinion no action was taken towards obtaining any Federal authorities.

Q. Did he resign his connection with the executive committee?

A. He never did.

Q Did he sever his connection in any way?

A. I never heard of it if he did.

Q. When was the meeting when you discussed getting the Federal authorities to take charge; was that before or after Judge Evans gave his charge to the grand jury?

A. I don't remember when the charge was given.

Q. When was the meeting?

A. The day before the election.

Q. The day before the election you already knew that Governor Bradley was going to call out the militia?

A. I think it was understood that the militia would be held in readiness.

Q. When you found out the fact that Governor had agreed with the parties he had consulted with to call out the militia, you determined you would not get the Federal authorities?

A. It had never been determined before that to get them; at any time prior to that.

Q. You said, if I caught you correctly, that you discussed getting the Federal authorities. When was that?

A. I said that matter was mentioned at that meeting.

Q. It was stated at that meeting that the Governor had agreed to call out the militia?

A. No, sir; it was not.

Q. You knew that fact?

A. I didn't know it as a fact.

Q. When did you find it out?

A. I don't know that I ever knew positively until after the election.

Q. You said at the meeting the day before the election it was

known the Governor would call out the militia?

A. I don't know that it was known; I had heard from outside sources that the Governor would have the militia in readinesss.

Q. You knew it from authority that you considered quite reliable?

A. I think so.

Q. Who was it told you that?

A. Mr. Robert Cochran.

Q. What time on the day before the election was your meeting of the Honest Election League held, at which they decided not to get the Federal authorities?

A. My recollection is indistinct; I think about 5 o'clock in the afternoon.

Q. On Monday, the 6th?

A. That is my recollection. It might possibly not have been on that day. It might have been the previous day—on Saturday; but I think that was the time.

Q. Can you tell me when the arms and ammunition was brought to Louisville?

A. No, sir.

Q Can you approximate the time?

A. I never knew positively that any arms or ammunition was brought until after the election.

Q. You saw it announced in the public prints; an announcement of the arrival of it?

A. I didn't notice that closely.

Q. I asked you if you did know arms and ammunition had been brought to Louisville?

A. Not all of them.

Q. Did you know of any of them?

A. I saw a statement in the paper to that effect.

Q. How long before the election was that?

A. Possibly a week or so.

Q. How long before the election was it that the Gatling guns arrived?

A. I don't think I heard of the arrival of any Gatling guns.

Q. Did not you read that in the papers?

A. I don't recollect now.

Q. You know now as matter of fact they did arrive?

A. I think I have read it in some of the testimony in this case as to Gatling guns being brought.

Q. Do you tell these gentlemen you never knew it until you read the testimony in this case?

A. I read it in the Courier-Journal that there was a Gatling gun in the Armory in Louisville.

Q. I call your attention to the fact that you stated that you

never read anything about the Gatling guns, and now you state you saw it in the Courier-Journal?

A. I don't recollect my testimony that I stated anything of that kind.

Q. Do you know that Governor Bradley himself, came to Louisville several days before the election, and that he, himself assumed charge and control of the militia?

A. I only know it by seeing it in the public prints.

Q. You knew, did you not, the party affiliation of Governor Bradley; and you knew he was taking a public interest on the side of one of the candidates?

A. I did not know what interest he was taking.

Q. Didn't you know he was making speeches for the Republican ticket?

A. I knew he had made some speeches.

Q. Did not that indicate to you that he was interested for that ticket?

A. I suppose he was interested for the success of the Republican party.

Q. Did you attend any of his speeches?

A. No, sir.

Q. You knew that the Governor, who was interested in one candidate and making speeches for one candidate was to be in charge of the militia himself; I will ask you if that did not have a tendency to give fresh courage to the side that he represented and to dampen the courage of the other side?

A. It gave the assurance that the administration party would not be able to run over the voters as they had in the past?

Q. It gave assurance to the other fellows that they had the militia at their back and they could run over the other side?

A. They did not want to run over the other side.

Q. But it gave them assurances that if by chance they wanted to run over the other follows they could do so?

A. They did not want to run over them.

Q. Was it not generally known in the city of Louisville that a Republican Governor who was speaking for a Republican candidate on the stump, and who expressed a wish in a public speech that he could chain the lightning in order that he might make more speeches—was it not known that the Governor who was a partisan of one side himself would be there to back up his side; and that the other fellows would be held down?

A. I don't think it was expected that he would use it for a partisan purpose by the citizens generally.

Q. It was not suspected by any one?

A. No, sir.

Q. You are more than 21 years old?

A. Yes, sir.

Q. After you learned, you and your friends, that the Governor was down with his Gatling guns and arms and ammunition and militia, then you decided that you and your party need not arm yourselves; did you not?

A. I can only speak for myself. I thought it was not necessary after that. I thought there would be no occasion for it.

Q. I agree with you that there was not. I believe you expressed the opinion, and you were asked your opinion, that because of the presence of the militia, a great many people came out and voted more freely than they would have done otherwise, did you not?

A. I don't think I put it that way.

Q. Did not you express the opinion that the militia had the purpose of bringing out a great many fellows?

A. No, sir; I did not. I said I did not think if the militia had not been there, that the election could have been carried on.

Q. Was the militia in evidence there that day?

A. No, sir; but the knowledge that it was there prevented a great many attempts that were anticipated on the part of the authorities to control the election by force.

Q. Now you are here under oath?

A. Yes, sir.

Q. You say it prevented a great many anticipated attempts. Do you swear to that as a fact or as an opinion?

A. That is my opinion.

Q. Do you know anything as a fact or are you merely giving your opinion?

A. I am giving my opinion.

Q. And you will not say whether you know as a fact anything of that?

A. I know as a matter of fact that there was no attempt made on the part of the administration to break up the election.

Q. Yes, but you do not answer my question. My question was, whether you know any fact on the subject of any attempt to break up the election, or is that merely a conjecture on your part?

A. An attempt on whose part?

Q. Anybody's part.

A. I don't know what, of course—I don't know what the intentions of the Administration party were.

Q. Then your evidence on that subject is all surmise—opinion of your own, is it not?

A. I have stated the facts.

Q. I am asking you whether your testimony on the subject of

any attempt to break up the election is just a surmise on your part?

A. No, sir.

Q. And you don't know any facts and don't know any man that had announced an intention to do it—to break up the election or to interfere in any way with the election?

A. I don't know positively that any man did express any intention to break up the election.

Q. Were you at a meeting, a public meeting—I mean what is known as the business men's meeting, held at the Board of Trade—held by the business men some two weeks before the election to discuss the election?

A. I remember the meeting; I was present.

Q. I will ask you if the chairman of that meeting, Mr. John Stites, did not call upon his honor, the Mayor, to make a statement in public to the people there assembled as to what his purpose and intention was; and if he did not make the public statement two weeks before the election, or at least two weeks?

A. I do not recollect exactly the time, but he did make a statement at that meeting.

Q. I will ask you if the Mayor at that time and place and some two weeks before the election, did not make a public pledge to the citizens of Louisville, that he would use the police only for the purpose of protecting the election and seeing that everybody had a full and free chance to vote; or words to that effect?

A. I think Mr. Stites warned him of the gravity of the situation and called upon him to state what his action would be and he gave assurances as to what would be his conduct on the election day, and he said that he would endeavor to do his duty without specifying how he would do his duty.

Q. Did he not—I want an answer to this question—did he not on that occasion make a pledge to the people, that the police should interfere in no way except for the purpose of protecting all the people of every party or words to that effect?

A. I do not recall any specific pledge of that sort.

Q. I will ask you if he did not give the people to understand that he went on record as promising, that the election should be free from any interference on the part of the public officials?

A. I understood him to promise, that so far as lay in his power, he would see that the election was a proper one.

Q. And he made the assurance publicly to the Board of Trade; at that hall in the presence of hundreds of good citizens?

A. Yes, sir. That was before he issued his proclamation.

Q. Did not at that same meeting, and that same hall, the same occasion, the chief of police and the sheriff and Mr. W. L. Lyons and Mr Suter and other members of the Board of Safety all get up and

give assurance to the same effect to the people?

A. Yes, sir; all these gentlemen you have named and Mr. Caruth and Mr. Hoertz were called on. I think he was present and refused to make any statement.

Q. Did you see him there?

A. I think I saw him. All of them got up and said in substance that they knew their duty, and would attempt to do their duty—being called on that way.

Q. Now you spoke about the proclamation: the proclamation has been read and I am not going to attempt to re-read it. Is it not a fact that in this proclamation, the Mayor said that he had heard that certain people were threatening to arm themselves and assemble together, and that he was going to see that there would not be unlawful assemblies?

A. The proclamation speaks for itself.

Q. Did not it say that?

A. Not in that way.

Q. Did he not refer to the threat of some people to arm themselves? I read from the Mayor's proclamation and ask you if this is accurate. You may read it with me: "Whereas, Threats of assemblies of armed men have been openly proclaimed to be in readiness on said day to carry out the unlawful and unholy purpose of interfering with the legally constituted authorities of our city; I now declare that I will with all the power vested in me as a chief executive, preserve the good name and the good order of our city." Now it was a fact that a number of gentlemen has threatened to arm themselves, and you were one of them as I understand you now?

A. I do not think I said that.

Q. Did you not say anything about having determined to arm yourself?

A. I said we were considering it.

Q. You said you had made up your minds to do it?

A. We hadn't positively made up our minds.

Q. Did you not say you had determined to do it?

A. I might have said that we had determined to do it if it was necessary.

Q. Who was to decide whether it was necessary?

A. We were to determine that ourselves on the day of the election.

Q. And the Mayor had received the information that certain gentlemen were going to arm themselves, and that was true?

A. I don't know that any threats had been made of that character.

Q. If the Mayor stated the fact to be that certain gentlemen were going to arm themselves, he stated the truth?

A. I do not understand that he stated that. He said threats had been made.

Q. You stated that you and others had talked it over?

A. We did not talk to the Mayor about it.

Q. Did you talk about anything of the sort with the Mayor?

A. We certainly did not take him into our confidence.

Q. You were trying to arrange the matter without letting him anything about it?

A. Yes, sir.

Q. He seems to have found that out. Do you know how he found that out?

A. I don't know that he knew it.

Q. You said something about the Mayor's proclamation having given you apprehension. Will you read that portion that gave you apprehension?

A. "I also declare that unlawful assemblies of all kinds, that is, the assemblage of persons at the polls, will not be tolerated." We understood that that was aimed at us, who had determined to assemble at the polls. I understood that he would not tolerate it, whether we were armed or not; whether we were peaceably exercising our constitutional rights of being there or not; or in any manner.

Q. You now, as a matter of law, claim, that parties have any right to assemble at the polls except for the purpose of voting?

A. We did not intend to assemble ourselves within the polls.

Q. I did not ask you what you intended to do; I asked you if you do not know that people have no right to assemble at the polls?

A. I think people have a right to assemble in the vicinity of the polls.

Q. Mr. McDonald, if I understand you then correctly, the part of this proclamation that gave you and your so-called Honest Election League apprehension, was when the Mayor said that he would not tolerate any unlawful assemblies at the polls?

A. "That is the assemblage of persons at the polls" of all kinds.

Q. Assemblage of persons at the polls will not be tolerated, that is the part that you thought meant trouble?

A. We construed that as a threat that we would not be allowed to assemble in the vicinity of the polls or to be there at all.

Q. That applied to all people, didn't it; if you notice it?

A. He didn't mention the Honest Election League.

Q. It applied to people of all parties and of all classes?

A. According to its language, it might be so construed.

Q. You saw fit to so construe it meant you and your people and nobody else?

A. I think that was what was intended?

Q. Does not that mean persons of all parties and all kinds would be prevented.

A. You have read the language.

Q. You read it and see if that that is not a fact?

A. He did not mention all parties.

Q. Is not that broad enough to include all?

A. You can draw your own inference from it.

Q. I will read it. "I also declare that unlawful assemblies of all kinds .. .. will not be tolerated." I will ask you if that language could lead anybody to believe that he had singled out any class of people or whether that does not mean all classes?

A. Of course he is too smart to single out the Honest Election League and mention them in any proclamation.

Q. You say you believe that the mayor intended that for you and your people?

A. I think that was what was intended.

Q. He says also that he will not allow the people to arm themselves; did he mean you and your people by that?

A. That was probably what he had reference to.

Q. That was a very improper thing on his part to declare that he would not allow the people to go to the polls with arms on them; you consider that a very improper thing for the Mayor of the city to do;; a usurpation of his power?

A. I do not know that he could restrict the right of the citizen to bear arms.

Q. I understand that you claim that the citizen had a right to arm himself and go to the polls; do you mean that?

A. I do not contend that the citizens could go there in armed bodies.

Q. You said that was what you were going to do? I so understood you?

Objected to.

Q. Was that the objection to the proclamation of the Mayor that he was not going to allow armed men to assemble themselves at the polls unlawfully?

A. We did not believe that the proclamation was made in good faith and for the purpose of preserving the peace, but we believed it was issued for the purpose of terrifying the members of the Honest Election League.

Q. Who was it that believed that?

A. I, for one.

Q. Who else?

A. A good many, I think.

Q. The names?

A. Colonel Bullitt believed that.

Q. Did Colonel Whallen also believe it?

A. I don't know

Q. Mr. Arthur Wallace?

A I don't know about him.

Q. Did you bring up that list of the members of the Honest Election League that you promised on Saturday to bring up?

A. I have a list of the first signers of the constitution. It embraces 205 names. There were other names gotten after that that I could not get this morning.

Q. Will you be good enough to file this?

A. Yes, sir.

Q. I observe it is headed by Alex. P. Humphrey, James P. Helm and Arthur M. Wallace; those were the Honest Election Leaguers you are talking about?

A. Yes, sir. Those are the signers, the members of the league.

Q. Did the Honest Election League raise any campaign fund in the city of Louisville?

A. It raised money to carry out its purposes.

Q. Will you tell the gentlemen of this commission how much money it raised?

A. I don't know anything about that.

Q. Can you approximate it?

A. I don't know anything about the amount it raised.

Q. Who has control of that money.

A. Mr. John W. Barr, Jr., was the treasurer, and I suppose he has possession of the fund.

Q. Who distributed the money for the Honest Election League at the Equitable Building the night before the election?

A. I don't think I saw any distributed.

Q. John W. Barr, Jr., is vice president of the Fidelity Trust Co.?

A. Yes; one of them.

Q. A prominent Republican?

A. Yes, sir.

Q. He had charge of the campaign fund of the Honest Election League?

A. He was treasurer.

Q. Were you at any precinct election day?

A. Yes, sir.

Q. Who was in charge of that?

A. I was.

Q. How much funds were sent to that precinct?

A. Not a cent.

Q. Did you go on the night before the election in the room in the Equitable Building where Mr. John Headley and Mr. Arthur Wallace were in the headquarters of the Brown democracy?

A. I know the Brown people had headquarters in the Equitable Building, but I was not there.

Q. Do you know whether any funds were distributed from that place?

A. I don't know.

Q. Mr. Arthur Wallace, who had charge of that headquarters was chairman of the Honest Election League?

A. I don't know that he had charge of the headquarters; he was chairman of that district for the Brown Democratic Party.

Q. Colonel B. W. Duke is a member of the Honest Election League?

A. Yes, sir.

Q. Mr. H. W. Bruce a member?

A. Yes, sir.

Q. Mr. John M. Atherton is a member?

A. If he is included in that list he is.

Q. What does Mr. H. W. Bruce do?

A. He is chief counsel of the L. & N. railroad.

Q. Is Mr. James P. Helm a member?

A. Yes, sir, and consulting attorney for the L. & N.

Q. What connection has he with the L. & N. railroad?

A. A member of the firm of Helm & Bruce, consulting attorneys of the L. & N.

Q. Is Mr. John M. Atherton a member?

A. Yes, sir, if his name is there.

Q. You knew that he was active in the league?

A. No, sir.

Q. He was a director in the L. & N. railroad?

A. I don't know.

Q. Mr. Frank Straus, one of the attorneys of the L. & N., from Bullitt county, was he a member?

A. I think not. I never heard of him in connection of the Honest Election League.

Q. I call your attention to No. 20 on the list?

A. He seems to have been a member.

Q. You knew he was one of the lawyers of the L. & N. railroad?

A. I have understood that he represents them in Bullitt county and some other counties.

Q. Do you know any lawyer or any officer of the L. & N. railroad residing in Louisville, who was not a member of the Honest Election League?

A. I don't know of any who were, with the exception of those you have named.

Q. Do you know whether Mr. Lyttleton Cooke was a member?

A. I don't know.

Q. Do you know he was not?

A. No, sir; I do not.

Q. Do you know whether Mr. M. H. Smith was a member?

A. I do not.

Q. Mr. Andrew Cowan?

A. He was.

Q. Was Mr. P. K. Helm a member?

A. Yes, sir.

Q. Do you know Mr. W. W. Thompson, treasurer of the L. & N. railroad?

A. I do not know him personally.

Q. Was he a member?

A. I do not know that he was; if his name is there I presume he was.

Q. Do you know he was not?

A. No, sir.

Q. Do you know Mr. Charles H. Gibson was?

A. Yes, sir.

Q. He was the law partner of the candidate on the Republican ticket for Governor, John Marshall?

A. Yes, sir.

Q. And counsel for the Pennsylvania railroad; and the Louisville Bridge Company, and the Baltimore & Ohio railroad?

A. I don't know just what clients he has.

Re-examination by Col. Breckinridge:

Q. Is it or is it not true that you understood this proclamation not to be a proclamation in good faith, but to be simply a threat to intimidate you and others; to deter you if possible; and to aid in the difficulties which had arisen out of the general election?

A. I understood it so.

Q. I will ask you whether you do not understand that the definition of unlawful assemblies "That is the assemblage of persons at the polls" meant such persons as you and others who had determined to go to the polls and see, if possible, if there could be a fair election?

A. Yes, sir; I thought that is what he meant.

Q. This proclamation was published after the speech that Mayor Weaver made at your meeting of the business citizens of Louisville?

A. Yes, sir.

Q. At that same time there was a speech made by Mr. Suter and Mr. Caruth, and somebody else?

A. Mr. Haager and Mr. Lyons and Mr. Bell; I do not recollect the others.

Q. I will ask you whether after that meeting, and after the expression of those sentiments by these officials, whether it was not true that these extra police consisting of 250 or 275, were sworn in?

A. Yes, sir.

Q. Whether it was not after that that the sudden change was made in the officers of election in the different precincts, by which some eighty-seven Republican officers were supplanted by Democrats?

A. It was. I know that the election officers had not been appointed at the time of the meeting referred to; and the changes

must have necessarily been made, if any were made, after that time.

Q. You know that all changes made in the officers of election must have been made after that publication?

A. Yes, sir; from general information on the subject.

Q. You knew that from reading the public press?

A. Yes, sir.

Q. I will ask you whether it was not after this meeting at which those statements were made that the public mind in Louisville came to the conclusion that there ought to be military there?

A. Yes, sir. I will say—I am not sure that the public had any confidence in the profession—assurances made by these officers at the time of this meeting.

Q. Did you, and as far as you know did the public, at that time, have confidence in the statement of the mayor and these others that they meant in good faith to carry out what they said?

A. I still thought, notwithstanding the assurances so called, that they were going to use their power in order to control the election.

Q. Do you know when this organization, known as the Honest Election Organization was formed?

A. It was formed either in September or October, I think, of 1899.

Q. And the names that you have here are its charter members?

A. The original signers in the order in which they signed.

Q. This is the order in which it was signed on this paper?

A. That is about the order; there were several subscription lists and they were added to the main list as nearly as possible in the order in which they signed. I think the first fourteen names are the ones who signed it at the initial meeting.

Q. That is, Alex Humphrey, Richard W. Knott, John Stites, Arthur M. Wallace, David W. Fairleigh, Robert Cochran, James P. Helm, George C. Norton; which Norton is that?

A. Capt. Norton, of the Norton, Robinson Co., dry goods.

Q. B. W. Duke, R. C. Davis. Mr. Davis is the gentleman upon whom Mr. Phelps delivered that eulogium?

A. He is the gentleman.

Q. R. H. Dorn, who is he?

A. He is a prominent citizen of Louisville.

Q. John W. Green?

A. An ex-Confederate soldier and a stock broker.

Q. R. L. McDonald?

A. E. L. McDonald, it should be; that is myself.

Q. Burrell K. Bruce, H. W. Bruce. This John W. Barr, Jr., is not Judge Barr, but is his son John?

A. Yes, sir.

Q. A. M. Cartledge?

A. Dr. Cartledge.

Q. Arthur Peter?

A. He is a lawyer.

Q. W. O. Harris? Is he Judge Harris?
A. Yes, sir.
Q. Harry Weissinger?
A. Tobacco manufacturer.
Q. Who is S. Atwood Smith?
A. Dr. S. Atwood Smith.
Q. A member of the last Legislature.
A. Yes, sir.
Q. John I. Calloway?
A. Major John I. Calloway.
Q. Hancock Taylor?
A. He is an ex-confederate soldier; in the real estate business.
Q. John H. Leathers?
A. Capt. John H. Leathers of the Louisville Banking Co.
Q. John B. Pirtle?
A. Is in the insurance business.
Q. John L. Dodd?
A. John L. Dodd is an attorney.
Q. Attilla Cox?
A. President of the Columbia Trust Co.
Q. Who is John C. Roach? Is he the whisky man?
A. I think so.
Q. Who is A. J. Carroll?
A. He is an attorney, known as Toney Carroll.
Q. Speaker of the House a couple of years ago?
A. Yes, sir.
Q. This list seems to be headed by Alex Humphrey and ends with A. J. Carroll; are they fairly represented citizens of the city of Louisville?
A. Yes, sir.

Re-examination by Mr. Phelps.

Q. You spoke of one of the prominent signers as S. Atwood Smith; was not he a former member of the Legislature, and did not he stand for re-election?
A. I don't know.
Q. Do you know how many votes he got when he stood for re-election?
A. I don't know.
Q. He ran for Congress down there, didn't he?
A. I don't know.

John W. Barr, Sr., being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. What is your name?
A. John W. Barr.
Q. Your residence?
A. Louisville, Ky.
Q. Your occupation?

A. I am a retired United States District Judge.

Q. How long have you resided in the city of Louisville?

A. Since June, 1854.

Q. What was your occupation from June, 1854, until you went upon the Federal Bench?

A. Practiced law in that city, in the State and in the Federal courts.

Q. When did you become Judge of the District Court?

A. April, 1880.

Q. And served?

A. Until February of last year 1889; not quite nineteen years.

Q. You are in politics a Republican?

A. Yes, sir; I vote the Republican ticket in Federal elections; I vote mixed tickets very often in state and local elections.

Q. In State and municipal elections you vote a mixed ticket?

A. Yes, sir.

Q. Have you ever held any other office, except the office of judge of the Federal Court for the District of Kentucky?

A. I was in the city council and I was also the president of the Sinking Fund of the city of Louisville before I went on the bench.

Q. For how long were you president of the Sinking Fund?

A. Three years, I think; I was one of the original members who organized the Sinking Fund.

Q. How long were you a member of the city council?

A. Well, I was several times elected by the council itself. I was never elected for a whole term.

Q. Do you hold any office now besides judge of the Federal Court—retired judge of the Federal Court?

A. I was appointed an election commissioner for the county of Jefferson by the State Board under the present election law.

Q. When were you appointed?

A. The last of September; I think the board organized about the last Monday of September, 1899.

Q. And did you act as such prior to and subsequent to the recent election on the 7th of November?

A. From the time of the organization I did, and until certificates were drafted, and am still an officer, I presume.

Q. Are you familiar, and have you been familiar with the general state of political affairs in the city of Louisville for the past year?

A. I have in a general way—yes.

Q. Have you any knowledge of the order issued by the Governor to assemble the First Regiment of State Guard at its Armory in Louisville last November?

A. I have not, personally.

Q. Did you know prior to the order being issued, or to the assembling of the guard there, that it was to be issued?

A. I did not from any authority. I saw in the papers and heard some talk immediately before the election, perhaps the day before the election, that the regiment would be called to the armory. I did not know personally what had been done or what had been ordered to be done.

Q. From your knowledge of the condition of public affairs in Louisville at that time and the condition of the public mind, what was your judgment as to the advisability of having that regiment ordered to assemble at its armory at the election?

A. I thought then and think now, that it was a wise precaution.

Q. Will you state to the board the grounds upon which you formed that opinion and the reasons you have now for your belief that it was a wise precaution?

A. Well, the condition of the public mind, and the excitement —and really the condition of the party in the city of Louisville, and the contests as between factions of the party, particularly of the Democratic party—the general excitement which existed with those people whom I met. I was not in any active business, and did not meet generally with the people except after I became an election commissioner, and then I met a good many persons, and from the excitement and the general condition of the public mind, I concluded that it was very desirable to have some reliable force in the event that there would be an election riot. There had been in the city a very bitter contest between two factions of the Democratic party; and that bitterness was increased by the fact that the papers —leading papers had taken sides—the Dispatch and Post on one side, and the Courier and the Times on the other. And it seemed to have divided the party and to have caused a great deal of bitterness, and there seemed to be personal antagonism between the proprietors of some of those papers, if not on both s'd.s. Public sentiment was very much aroused; the tone of the papers was very inflammatory, exceedingly so, on both sides.

Q. In your judgment as a citizen of Louisville, and an officer at that time, was that public excitement allayed and that necessity for the assembling of that regiment at its armory, ended by the proclamation of the mayor of Louisville, and the swearing in of the extra police?

A. It was not, in my opinion.

Q. What, in your opinion, was the effect upon the public mind of the people of Louisville by the proclamation of the mayor, and the swearing in of those extra police?

A. I did not know of the swearing in of the police, and do not remember to have heard that matter discussed; and I do not now remember that I knew until, well, perhaps the latter part of the election day, that special police had been sworn in. The proclamation, with those whom I happened to meet, did not allay the excitement. I should say to the commission that there was an unfortun-

ate condition of public mind there, in the distrust which a great many persons seemed to have of the police. The contest in the Democratic party had assumed that of anti-administration and of administration, and assumed the farther position of Goebel and anti-Goebel; and I observed that a good many persons whom I heard speak about the matter, seemed to distrust—excepting the administration, I mean those who were opposed to the administration and seemed to distrust the good faith of the administration and of the police. The character of the proclamation, I do not think, allayed the excitement, although in terms I see no special objection to it, except upon one ground, perhaps.

Q. Except what?

A. Except upon one ground; there seemed to be an assumption there should not be any assemblage of people at the polls. I heard that commented upon—I, myself, mentally commented upon it when I read the proclamation.

Q. What was your own comment, if you say you mentally made one, upon that call in the proclamation?

Counsel for contestants object to what the witness' comment was on the subject.

Q. What was your construction of it, as a possible construction of that?

A. I thought it would be liable to misconception; I thought it might be construed to mean powers which I did not think the mayor had the right to exercise.

Q. Such was what?

A. Preventing persons from going peaceably to the polls and seeing that there was a fair and honest election.

Q. Is there any authority, that you know of, given to the mayor of Louisville to break up assemblies of persons peaceably convened near the polls, but not within fifty feet?

A. That is not my view of the authority; I thought that he was going beyond his authority in assuming to have that right; however, I had not examined it carefully. That was only an impression. I found that with those few persons that I heard express themselves, that that seemed to be their impression.

Q. Was, or was it not, Judge, accepted by those persons who were opposed to the administration, as a threat made at them to use the power of the police to arrest them if they did go to the polls?

A. I can not say; I had no information upon that subject. I do not remember to have heard anybody comment in that direction.

Q. Were you one of the election commissioners of the county of Jefferson?

A. Yes, sir.

Q. Can you say to the board at what time the last changes of any considerable number were made in the election officers of the city of Louisville?

A. About five o'clock on Monday evening, the day before the election.

Q. Had the board filled all the required offices prior to that time?

A. All of the offices had been filled; yes. Perhaps I should state to the board briefly, how the matter came about.

Q. I was just going to ask you to state that, in your own way.

A. We organized, I believe, on the last Monday in January, and on the second day of October, the registration—

Q. Last Monday in September, you mean?

A. September, I should say, and on the second day of October, the registration commenced. The time was very brief indeed to select the number of officers, which were over seven hundred. It was agreed between the members of the board that we would invite recommendations from the respective parties, and by the respective parties, I mean the regular Democratic party and the Republican party, both of whom had a ticket then nominated. Lists were furnished; it was understood that I should request from the Republican party a list of names and recommendations, and Mr. Caruth should request of the Democratic party. It was also understood that as soon as lists were furnished they should be filed with the secretary, Mr. Caruth being the secretary. As soon as the committee furnished me a list, the Republican committee, I presented it to Mr. Caruth; he informed me that he hadn't his list ready, but probably would get it the next day. The next day I went and found he had a list of four names to each precinct, and I suggested that he should give me a copy, or allow a copy, and he, in response to that, said, "Well, to investigate." I thought then that perhaps it would be my duty, or I would have time to look somewhat into the personnel of the different recommendations. He suggested that if it was agreeable he would take his list and appoint two officers from the first two names on his list, and I would appoint from my list that I had, and which I had presented to him. The time was very short, perhaps not more than—that was, perhaps, Thursday, or might, perhaps, have been Friday, and the registration was the following Tuesday, and I agreed that that was the best we could get. Thereupon we met the next day, and we divided the officers in that way, the Democrats appointing the Democrats and the Republicans the Republicans—alternating the clerk and sheriff. That filled the list entirely, and filled every election office of the city of Louisville. At my invitation Mr. Caruth and myself went around on the registration day and visited as many precincts as we could the three days—drove around in a carriage. We did not go to those precincts about which there had been no trouble theretofore, and there was no occasion—the officers were well known, and he and I saw perhaps eighty or ninety of those election officers. After the registration was over, I had a copy made of all the officers who had served in the registration,

and where they registered, if they had registered, and had a copy of that made for Mr. Caruth, and handed him a copy, and I then myself went over the officers that had been appointed upon my recommendation to ascertain whether they were qualified under the law; whether they had resided in the precinct, and whether they had been there resident twelve months. Where I had a doubt about it, I had a list made out, and investigated; and where they were not residents, or where they had not resided the requisite time, I had the person to resign. I also found out, and called his attention to the fact that quite a number of Democratic appointees, and quite a number of Republican appointees, had not served, and I took the trouble to require of all those who did not serve to resign, and saying that they would not serve at the election. I also had a resolution passed authorizing Mr. Caruth and myself to prosecute the persons failing to serve without proper cause or reason, under the statute. That was the condition of matters until we filled the precincts in the county some days later. We delayed the county, as there was no registration there; and that was done, and then all was filled except those who had failed to perform their duty or whom we found were not living in the precinct, or were not living in the State and probably would not serve. We had a meeting about the 31st of October in which quite a number of changes were made by Mr. Caruth, one hundred and sixty or seventy in his list, and about sixty or seventy in the list which I had furnished. When those were filled up, that made the full list of election officers for the city of Louisville, and in point of fact they were all closed up and filled out, with exceptions here and there—men found not to be in the city—would not be in the city by the first day of November, except that my mistake in making up the list, which had been hurriedly made, and made by somebody other than Mr. Caruth, by accident, some five, six or seven Republicans were seemingly removed in this wise; an order would go to remove John Jones as the sheriff, and the person to be appointed in his stead was John Brown, would be appointed clerk, which, of course, would oust the Republican clerk. Sometimes there was a mistake in men who had never been appointed, but who had served as substitutes in the registration. As soon as I found that out, and called the attention of Mr. Caruth to it, he very readily agreed to have the proper orders, but that was not done until about Saturday evening before the election, and that fact caused some confusion in the four, five or six officers that were thus removed accidentally, I presume. It was at my instance, when we met the week before the election, that we should have a meeting on the afternoon before the election, with a view if we found any person who could not serve, that would be out of the city, or was sick, we could fill those vacancies; and at the meeting we met about three o'clock, Mr. Caruth presented quite a number, sixty or seventy, I believe, Democratic appointments or

changes, and I had some ten or twelve, maybe. After we were through, I supposed we were ready to adjourn then—

Q. Now, when was that?

A. This was the 6th.

Q. Afternoon before the election?

A. Yes; 6th of November in the afternoon; we met about five o'clock—about three o'clock or half past, and we were through with our business about five, when Mr. Hoertz, who was the chairman of the commission, said he had received a communication which he desired the secretary, Mr. Caruth, to read. When it was read, it was a letter—communications that were read; one was a letter from Mr. Humphrey Marshall, who was an independent candidate for city judge, and the other was from Charles Taylor, a colored man, who was a candidate—independent candidate against the Republican candidate, Mr. Barret. The purport of Mr. Marshall's letter was, that he was a candidate, and that he had been ignored in the selection of Republican officers, and that he desired a representation, that he was entitled to it, that he had the nomination of the faction of the party known as the Hambrick people, but that the time had not been sufficient for the committee to get together and ask for representation, but he asked it in his own name, as they had approved his candidacy. Taylor suggested he was an independent candidate, and he had been ignored, and in each communication there were names which they asked to be appointed. Mr. Marshall's list was one hundred and thirty-eight officers and Taylor's was thirty-five. There was quite an animated discussion, a very earnest one upon my part. It resulted in Mr. Hoertz moving not to give the negro any representation; that was passed. And then after further discussion and earnest talk, instead of giving Marshall, as he asked, two names, two officers at a precinct, thus removing all the Republican officers that had been appointed, he was allowed one officer, at every precinct that he had asked for appointments.

Q. That resulted, did it not, Judge, in fixing it so that there was one Republican at each precinct, representing the regular Republican ticket from Governor down, and one Marshall judge, representing Mr. Humphrey Marshall, who was a candidate for the city judgeship of the city of Louisville?

A. Yes, sir.

Q. And those changes were made after five o'clock on the afternoon of the 6th of November?

A. Yes; they were passed by a resolution; I suppose they were not really entered until much later than that, but the discussion commenced about five o'clock and perhaps the motion was carried at half-past five or six o'clock.

Q. No representation of judges was given to the Brown ticket?

A. None.

Q. None to the Prohibition ticket?

A. None.

Q. Nor the Populist ticket?

A. No, sir.

Q. But the officers were divided, one-half given to the regular Democratic ticket, one out of four to the regular Republican ticket, and one out of four to Mr. Humphrey Marshall, the candidate for the police judgeship of the city of Louisville?

A. Yes, sir; understand that the precincts asked for did not cover all the city; there was quite a number of precincts that Mr. Marshall did not ask any representation.

Q. How many do you recollect were there that he asked for?

A. He asked for, I believe, 138.

Q. And got how many?

A. He got 79, as I count now from the list furnished me afterwards. I had the impression at the time, and so announced, getting it from the stenographer who represented the commission.

Q. That was seventy-nine separate precincts?

A. Yes, sir; seventy-nine separate precincts.

Q. So that in seventy-nine precincts I was correct?

A. Yes, sir.

Q. Two Democratic officers, one Republican, and one Marshall representative?

A. Yes; Marshall did not ask representation in some of the precincts, the central precincts, at all.

Q. Sir?

A. He did not ask in some parts of the city at all for representation in his request; he asked for two officers in every precinct of the Twelfth Ward, except one, and there were twenty-six precincts in that ward, and he got twenty-five—a representation in twenty-five precincts of that ward.

Q. That Twelfth Ward—are you sufficiently acquainted with the city to know what is ordinarily the political complexion of that ward?

A. No, sir; I don't know, except a general impression. It is a very large ward.

Q. Where?

A. It is in the western part of the city, votes five or six thousand votes in the ward; and I have the impression that it is very considerably Republican; I can not give you the figures.

Q. Now, the Eleventh Ward?

A. The Eleventh Ward, there were a great many precincts he asked for representation two at a precinct, and one given, and there were fifteen in those precincts which Marshall was granted representation. I have a copy of the appointments.

Q. Will you file, Judge, a copy of the appointments showing the precincts at which these changes were made?

A. And also copy of the requests, I believe.

Q. Have you got copies of the requests also?

A. Yes.

Q. I wish you would file them, too.

A. There are the appointments; and there are the requests; these are the letters. Here is Taylor's letter and his request, the list of names that he requested.

Q. Will you let me know, Judge, what is the political complexion of the Eleventh Ward?

A. I can not speak with any degree of accuracy, but I think it is Republican.

Q. Judge, did you know the persons whose names were given by Mr. Marshall, and the persons who were appointed by your board upon the request of Mr. Marshall?

A. I did not; there may have been names who were appointed—there may have been names in the lists of persons whom I would know. When the letter was read and the list was presented, the names were not read at all by myself, nor by either of the commissioners. What occurred led me to believe that Mr. Hoertz did not know that Taylor was a colored man; and I inferred from what was said that neither Mr. Hoertz nor Mr. Caruth had examined the list which Marshall presented. It was read, with the statement by Mr. Hoertz that it had been handed to him a few moments before he came into the board meeting and there was no discussion as to the personnel of the names presented by either party, nor were there any suggestions by either of my colleagues as to the names of the persons who were sought to be appointed.

Q. Before the appointment was made, was there any examination made by either of your colleagues as to the names and the characters of the persons who were appointed from the Marshall list, and if so, what?

A. None whatever.

Q. Was there any information given as to whether these were proper persons to be appointed, or as to what their political complexions were?

A. None whatever. Here is the resolution which Mr. Caruth drew at the table after he had read the communication, and the discussion arose immediately upon that resolution thus presented: "Resolved, That the request made by Charles L. Taylor, a Republican candidate for the Senate, endorsed by one branch of the Republican party, be granted, and the officers requested by him be appointed in the Third, Fourth Fifth, Sixth and Seventh wards, and persons therein mentioned be selected and appointment, and that the request made by Humphrey Marshall, the Republican candidate for police judge, be granted in the First, Second, Eighth, Ninth, Tenth, Eleventh and Twelfth wards, in order that said two candidates, endorsed by the same branch of the Republican party, may have representa-

tion on the list in every ward in the city, and that the request of the said Humphrey Marshall, so far as the Third, Fourth, Fifth, Sixth and Seventh wards are concerned, be requested, and that the sheriff of this county be notified of these appointments in order that he may notify the persons selected of their appointment.

Mr. Hoertz moved to amend the resolution, and that Chas. L. Taylor's request for appointment of election officers be denied. Carried. And that Humphrey Marshall's request for election officers be granted in that he might have one officer in every precinct asked for. In other words that whenever Humphrey Marshall asked for two officers in one precinct, that one of the names be stricken out.

Q. Now, in striking out the names, one at each precinct, why was that striking done?

A. The list that you see there, two names in some of the precincts, it was just handed over to Mr. Walker, who was the stenographer of the board, and he was directed to strike out one where there were two names, without any selection at all.

Q. Was he directed as to which name to strike out, or was it left to Mr. Walker's discretion?

A. He was just directed to strike out a name.

Q. Where there were two at a precinct, Mr. Walker took one.

A. Just took a pencil and run it through; you can see how it was done on that list.

Q. After he run his pencil through the list, and made the selection, did the board then pass a resolution approving his action, or—

A. That was in pursuance to the general resolution, whilst the matter was pending; he was directed to strike out, which he did right there at the board, not indicating—at least the board and no member of the board indicating which one of the two should be stricken out; he did that.

Q. Was there any direction given to Mr. Walker whether he should strike the first name, or the second name, or alternate in striking the names.

A. None at all.

Q. He was just ordered to strike one name out where two was requested?

A. Yes, sir.

Q. Did you approve or oppose that?

A. I opposed that very strenuously, with much earnestness.

Q. Was there any evidence before the board that these persons were Republicans, or had registered as Republicans at all?

A. There was no evidence at all as to the fitness of the persons; there was no discussion or no suggestion at all that they were, or that those whom they supplanted were not.

Q. Did you at that time have any knowledge, or have you since had any knowledge, as to how this list was made up?

A. Well, one hearsay. I have no knowledge at all, gentlemen.

Q. No personal knowledge?

A. What was said by the gentlemen who presented it—

Q. Sir?

A. I say, what was said by Mr. Hoertz, and what was said by Mr. Caruth was to the effect that they had not themselves presented the list, or made out the list, nor did they know anything of the list personally, to give Marshall the representation that he asked for. That is a copy furnished me by Mr. Walker, and that is a memorandum of what he made of what was done in the board. There is more of it.

Q. You mean, Mr. Alonzo Walker, the present stenographer, was the secretary of that board?

A. Yes, sir.

Q. Have you any knowledge, in any way, as to what effect this removal of seventy-nine election officers just so near to the election, and the substitution of seventy-nine Marshall judges, had upon the public mind, as to the fairness of the election?

A. The fact was published that evening in an extra by the Post, and I wrote a card which I did not allow to be published in the Post that night, but it was published on the morning of the election, stating the facts as they are now detailed to the commission, in general, not in detail, as I give now.

Q. There was then a publication that afternoon in an extra of this action?

A. Yes; and some very considerable excitement.

Q. I will ask you whether it did not cause considerable excitement and general comment, or considerable comment?

A. I presume it did; quite a number of gentlemen came where I was, under great excitement, in regard to the matter.

Q. And the next morning papers published your card explaining what had occurred?

A. Yes.

Q. Have you a copy of that card?

A. No, I have not. It was published in the Dispatch and in the Commercial—not in the Courier—the next morning.

Q. Judge, who indicated the names of the election officers who were supplanted by these seventy-nine appointees?

A. They were reported to me through the regular Republican committee.

Q. I mean, of these seventy-nine? Let me explain. I understand that there were seventy-nine officers removed by the appointment of the seventy-nine Marshall appointees?

A. Yes.

Q. Now, who indicated what Republican officers should be supplanted by these new appointees?

A. That was done, I presume, by the secretary after the adjournment of the board. The list that you see there, "so and so be appointed judge, or sheriff, or clerk," in each instance would remove an already appointed judge, sheriff, or clerk.

Q. And as there was but one Republican judge, or one Republican sheriff, he was to be supplanted by the appointment of the one named.

A. Yes, and that was filled out—filled subsequently in the list that you see—it was "So and So" in place of "So and So."

Q. Had you any knowledge at that time or your colleagues, as to whether these appointees were residents of the particular precincts?

A. Had none whatever.

Q. Had you any knowledge as to how many of them actually appeared next morning and were sworn in and served, and how many of them were absent so that substitutes could be elected by the other officers?

A. I have no information upon that subject.

Q. Have you any information as to how the election officers in Louisville stood on the day of election as between the Democratic and Republican parties; as to how many precincts there were more than two Democratic election officers?

A. I don't know. The seventy-nine would give, the changes in seventy-nine precincts would give three election officers to one. Whether there were any vacancies filled by the election officers, or not, and how many, if any, I have no information.

Cross-examined by Mr. Phelps.

Q. Will you tell the gentlemen of the commission how many officers of election there were—the total number in Louisville?

A. There are 177 precincts in the city, four officers to each, which makes 708 all told.

Q. 708?

A. Yes, sir.

Q. And you say that the changes spoken of that were asked by Mr. Marshall, the Republican candidate on the Hambrick ticket for judge of the City Court, were seventy-nine?

A. Yes, sir.

Q. That was about one in ten of the total number of the entire list of officers?

A. No; more than that.

Q. A little more than one in ten—seven hundred and eight was the total, and seventy-nine was the number he got. Now, Judge, ain't it a fact that there were two factions of the Republican party, and two men who claimed to be chairman of the Republican party?

A. Not as I understand it. You ask me for my understanding—not at the time of the change.

Q. Don't you know that his honor, Judge Toney, gave a judgment, which is now appealed to the Court of Appeals, holding that the Hambrick committee was the committee?

A. Yes.

Q. Was not that judgment of Judge Toney deciding that the Hambrick was the committee, in full force and effect at the date of the appointment of these seventy-nine for Marshall?

A. I presume it was here under appeal.

Q. Pending an appeal?

A. Yes.

Q. And the judgment of the lower court was still in effect?

A. I presume so; superseded, however.

Q. And isn't it a fact, Judge, that the Hambrick committee, which was decided by Judge Toney to be the legal committee, was the committee that nominated Mr. Marshall for judge of the police court?

A. No; I do not understand that.

Q. Wasn't he nominated at a meeting of the Hambrick faction?

A. You ask me for my opinion—I don't so understand it. He said in that letter, if I am not mistaken, that his candidacy had been approved by that committee.

Q. Didn't the Hambrick committee, which Judge Toney decided was the legal committee, approve of the candidacy of Judge Marshall?

A. So he stated in that letter.

Q. Now, Judge, Mr. Marshall asked for 138 officers to represent his interests?

A. Yes, sir; 138.

Q. And he was allowed 79?

A. Yes. sir.

Q. Judge, isn't it a fact that when the original list of election officers was appointed, for the Democrats and Republicans, that you yourself made a motion which was passed, or offered a resolution, I should more properly say, which was passed, that these were appointed subject to the right of either side to remove them in the future?

A. Yes, sir.

Q. And that resolution was unanimously adopted?

A. Yes, sir.

Q. Agreeing that the list appointed might be changed by either side?

A. Yes, sir; that didn't mean that I should change the Democrats, or they should change the Republicans but each side would have the right, if they found, for any reason, the party appointed wasn't a proper person, to change it.

Q. Did you claim the right to appoint as many officers as both the other officers appointed?

A. Yes, sir; that was given to me—I represented the Republican and they represented the Democratic party.

A. They hadn't anything to do with the selection of the Republican officers?

A. They hadn't anything to do with the selection of the Republican officers, nor did I have anything to do with the selection of the Democratic officers.

Q. How many of the officers appointed by you did you know the qualifications of personally?

A. Well, I found out when I first appointed them, I knew a very limited number; but my acquaintance with them grew after that.

Q. How many changes, Judge, did you personally have made in your list after you originally appointed them?

A. Well, I had all that didn't live in the precinct, and I had all who didn't serve in the registration, who would not agree in writing to accept the office and serve.

Q. Well, your party leaders recommended a number of changes, didn't they, at different times?

A. Not except that.

Q. Well, how many changes altogether did you make after your original list was made, approximate it?

A. Probably about sixty.

Q. Judge, in all the time that you have lived in Louisville, have you ever before, in the history of our city, known of any election held where all of the militia was called out, and gatling guns were brought into the armory that they had?

A. Personally, I have not. I had understood that troops were at the mayor's election in 1897, and perhaps I have heard that before.

Q. Didn't you understand, Judge, that the militia was not called out, but merely a guard put in charge at the armory to take care of the State's property.

A. Well, I had a different impression. I don't know the exact fact, because I was then on the bench, and very often away from home.

Q. Then the fact is, Judge, that you don't know, of your own knowledge, any time in the whole history of Louisville, when all of the militia was called to arms, and gatling guns were brought into the armory on election day, before this time?

A. No; I don't know that fact—don't know it at all. I don't know that any gatling guns were brought to Louisville, now, or previously.

Q. Did you not hear that two gatling guns were brought to Louisville on the 6th day of November, 1899?

A. I have heard it since; yes.

Q. Wasn't it published at the time in the papers?

A. I think I saw some statement of that sort in the Courier.

Q. Judge, the colored man who was a candidate asked for representation in election officers?

A. Yes.

Q. You voted against that, didn't you?

A. Yes.

Q. And Mr. Hoertz voted against that?

A. Yes.

Q. So you and Mr. Hoertz agreed on that occasion that the colored man should not have any representation?

A. I don't think that Mr. Caruth voted at all, but perhaps he voted against that too, after discussion. By way of explanation, when the matter came up—the discussion came on, Mr. Hoertz indicated that he was not willing to give the negro representation, and also rather indicated that Mr. Marshall wasn't entitled to two.

Q. And you agreed with Mr. Hoertz on the proposition?

A. And then Mr. Caruth asked a consultation, and they went out of the room and came back, and after that consultation the action was taken, which you see there.

Q. And you agreed in the idea that the colored man should not have any representation?

A. Yes.

Q. Judge, you were a judge of the Federal court in our district?

A. I don't think a colored man or white man should have representation that way.

Q. Although Judge Toney had decided that the Hambrick faction was the Republican party?

A. No, I don't think he had ever decided that. He decided as between the two committees, that the Hambrick committee was the regular committee. That committee had made no nominations; they had two meetings or more, and as far as the public was concerned, made no nominations, and nobody came and suggested to me that they were entitled to representation.

Q. Judge, did you read, or did you hear Judge Evans' charge to the grand jury, given just before the election?

A. I did not.

Q. Did you read it?

A. I read part of it; yes, sir.

Q. In the papers?

A. Yes.

Q. During all of the nineteen years that you were judge of the Federal court, did you ever give a charge, touching a State election, of that kind, to any grand jury?

A. I have no recollection of it. Most of the time, or at least, you know, until a few years back, they had a law, a Federal statute, and I have appointed inspectors at congressional elections, not at State elections.

Q. My question was, whether at any time, in State elections, you gave such a charge to the grand jury, just before the election, touching a State election?

A. No, sir.

Q. Have you ever given at any time, a charge touching State elections during all the nineteen years that you were on the bench?

A. No, sir.

Q. Judge, do you not know, as a matter of fact, that what is called the election franchise laws of the United States, were each and all repealed; or have you ever looked that up?

A. I know that it is claimed that there is one section that covers the control by the Federal court over elections.

Q. Who claims that?

A. Well, it is claimed, I think, by quite a number of persons.

Q. Have you ever looked that up to see whether that section was repealed?

A. No, sir; I never examined it.

Q. Do you know the number of the section—I will give you the date of the repeal of it?

Objected to, and question withdrawn.

Q. Judge, did you ever, in the history of all of your term on the Federal bench, know of any other Federal judge besides Judge Evans, who, just before the elections, gave a charge of the kind or sort given by Judge Evans, touching a State election?

A. Really, I had so much to do when I was judge, with my own duties, that I did not look into what other judges were doing. I am not prepared to answer that question in any way.

Q. You never heard of it, did you?

A. No, sir.

Q. Were you present in the State Convention of the Republican party, when Governor Bradley made a speech in favor of the Hambrick Committee, so called?

A. No, sir; I never attended any of those meetings.

Q. Did you know, Judge, that Governor Bradley was in Louisville several days before the election?

A. I didn't know it; I saw in the papers that he was there and made a speech a week before the election.

Q. Was he making speeches in favor of Mr. Taylor's candidacy—his ticket?

A. That was my understanding.

Q. Did you know that Colonel Mengel, the gentleman in charge of the militia, was a Republican?

A. I understand he is—yes.

Q. Was it generally known by the public, the people in our community, that Governor Bradley, a Republican, and Colonel Mengel, a Republican, were to be in charge of this militia that were called there the day before the election?

A. I don't know; I presume—

Q. Don't you think it was generally understood?

A. Colonel Gray was the old Legion officer, and I presume that he would have the charge, but it is only—

Q. Isn't it a fact that the Colonel is the man in charge, the senior and chief officer?

A. Oh, yes.

Q. Isn't it a fact that the people of Louisville knew that the Republicans, those interested in the Republican ticket, had the control of the militia?

A. I presume the Governor would have control of it.

Q. Generally understood by the public, was it not?

A. I can not say as to that. I take it for granted that a man who would know a fact, would know that.

Q. That that was a fact?

A. He is the Governor of the State.

Q. Were you, Judge, ever elected by the people to any office?

A. I never ran in my life for an office.

Q. Sir?

A. Never ran for an office.

Q. Was Governor Bradley himself in the city of Louisville, assuming general direction and control of the militia.

A. I have no knowledge on that subject; I didn't see the Governor whilst he was there.

Q. Did you see the militia?

A. No, sir; I did not.

Q. Did you see any part of it?

A. No, none at all.

Q. Do you know where the armory is, Judge?

A. I don't know where it is.

Q. You know the building—the third building above Seventh on the north side of Main—you know that location?

A. I know Seventh street, and I know Main. Which way do you mean, east or west?

Q. It is the third building east of Seventh, on the north side of Main, just below the Louisville Hotel; you know that location?

A. Yes, sir.

Q. That is the business part of the city, is it not?

A. Oh, yes; business houses there on that square.

Q. Have you ever, Judge, in all of the forty years that you have been in the city of Louisville, known of the city having anything like an armory located in that portion of the city, or did they have it out, back away from the business part of the city heretofore?

A. I think the regular armory that was used by the old militia is on Seventh street between Chestnut and Walnut.

Q. That is out towards the residence part of the city, is it not?

A. Yes, sir.

Q. And away from the business part where people are going and coming?

A. Yes.

Q. Have you noticed, Judge, in going to the depot, that this armory which they got for that special occasion, has now got a placard on it?

A. No, sir; I didn't know the building was vacant, or that it was occupied?

Q. Did you know, Judge, that that was rented for an armory just a short time before the election?

A. I knew nothing of it.

Q. Don't you know, as a matter of current history, that we had

no armory in the city of Louisville from along in the summer of 1898, up to about August or September of 1899?

A. Yes; I know that the Legion went to the war, to Cuba, and that we didn't have any troops or any militia organized after that time, until the new organization.

Q. And when the old militia came back, they were then government officers and soldiers, and they were drummed out, as we call it, or released?

A. Well, they were mustered out. Where they were mustered out, I don't know, whether at home or somewhere else.

Q. It developed here they were mustered out in February, 1899; from that time on to the fall of 1899, we had no militia in Louisville at all, did we?

A. I don't know; I think there was quite a hitch about organizing the militia, by reason, from what I saw in the paper, by reason of the judge refusing to make some certificate.

Q. As a matter of coincidence, however, the militia was not organized until just before the election, was it?

A. I don't know how long before. I have an impression that it was some time before, but it is a mere impression.

Q. Isn't it your impression, that no armory was obtained until just before the election?

A. I don't kow anything about that at all; I really have no information on the subject.

By a committeeman: Something has been said about the militia being in Louisville on last election day under the immediate control of the Governor, as the chief civil magistrate of the State; I will ask you if it is not a fact that embraces in one office the positions—is not the Governor also the chief military officer of the State?

A. Oh, he is commander-in-chief, I take it.

Q. Is it not true that embracing in one office the position of chief civil magistrate, and chief military officer of the State, he thus possessed a dual function?

A. Well, I have the impression that the Governor has the control; I may be mistaken in that. I have not examined it—that he has control if he chooses to take it of the militia for the purpose of suppressing disorders.

Q. In the exercise of these two functions are they not separate and distinct, and the powers of each well defined and limited?

A. I say I can not answer the gentleman. I have the impression that it is one of his duties, if he cares to exercise it in person, to suppress disorders and riots, and that he can use the military arm of the law to do it.

Q. I don't know whether the judge catches my idea; while acting as chief military officer of the State, is that not a separate function from when he is acting as chief civil magistrate of the State?

A. I don't quite catch the gentleman; it is the same person acting, and I don't see that his office as commander-in-chief is a sep-

arate office from that of Governor. I would say that he is in control of the militia, because he is the Governor, and he has the right, as commander-in-chief, because of the fact of his being Governor.

Q. Does not the Governor possess a dual function then?

A. I really can not answer it, because I have not looked into the matter; I am not at all up in that regard. I would be pleased to give you any opinion that I would feel justified in expressing.

Q. In acting as the chief military officer of the State is the Governor acting as the chief civil magistrate of the State?

A. I would think that both positions united into one person, I would think so.

Redirect examination by Colonel Breckinridge:

Q. Judge, I understood you to say there were 177 precincts?

A. Yes.

Q. So that Marshall got 79 out of 177 precincts?

A. Yes.

Q. Not quite one out of two?

A. Yes.

Q. As to the Hambrick decision of Judge Toney, that, as I understand you, so far as you know, had not taken effect at Louisville, either by the appeal being superseded or otherwise?

A. My understanding is that the judgment was superseded, and is now in the Court of Appeals, and was then in the Court of Appeals. My understanding was farther, and I acted upon it, that the Hambrick committee did not claim, themselves, to have any representation.

Q. And did not ask for any?

A. And did not ask for any.

Q. And never did ask for any?

A. And never did ask for any.

Q. And the claim of Mr. Marshall was not accompanied by any claim from Mr. Hambrick, or any member of his committee?

A. None at all.

Q. Or any action of that committee?

A. None that I saw presented.

Re-crossexamined by Mr. Phelps:

Q. In the list of seventy-nine names that were furnished by Mr. Marshall, can you give us any one of the seventy-nine who were not registered Republicans?

A. I can not. I can not give you either one way or the other. I have an impression that there were both Democrats and Republicans registered, on that list, but I can not speak with any accuracy.

Charles A. Wilson, a witness, being duly sworn, and examined by Mr. Phelps, testified as follows:

Q. Will you give your full name to the gentlemen of the commission?

A. Charles A. Wilson.

Q. What is your age?

A. Forty-two.

Q. What is your residence?

A. Louisville, Ky.

Q. How long have you been a resident of Louisville, Ky.?

A. Practically, all my life.

Q. Are you acquainted with the people of the city of Louisville and especially with the dispositions and the character of the people generally ?

A. I suppose that I am acquainted with the condition of public opinion in Louisville.

Q. Will you be good enough to state, in order to show, what opportunity you have had to know the people, what business you have been in in the city of Louisville, starting when you were a young man?

A. Well, I was a printer, in the newspaper business, and afterwards a lawyer.

Q. How long have you been a member of the Louisville Bar?

A. Nearly thirteen years.

Q. Have you held any office in the city of Louisville; if so, what office and how long and for how long?

A. I was a member of the board of aldermen of the city of Louisville for two years; president of that board for one year; afterward a member of the board of public safety.

Q. What other office have you filled—filled any judicial office?

A. Judge of the police court; pro tem. judge.

Q. Did you have any opportunity to see and know the condition of affairs in Louisville during the past election in November, 1899?

A. Yes, sir.

Q. Will you give the gentlemen an idea of what opportunities you had to see and know how the people felt on the subject?

A. I was a candidate before the people in the primary, and then in the general election, for the position of judge of the police court, and made an active, a very active, canvass of the entire city.

Q. I will get you to state whether or not before the election or on the day of election there was any fact or state of facts existing in the city of Louisville which made it necessary or proper that the militia should be called out?

A. There was none whatever. There was some considerable feeling worked up in the Sixth and Seventh wards in which district a great many members of the Honest Election League resided; but excepting this, I didn't discover at any place any evidences of undue excitement.

Q. What opportunity have you had, if any, to know of the general efficiency or inefficiency of the police force of the city of Louisville?

A. For four years I was a member of the board of public safety, and the police department especially attracted my attention; so

much so, that I believe I was the one—I know I was the one—who suggested and prepared the metropolitan police bill which now governs the cities of the first class.

Q. Is it or not the object and purpose of the metropolitan police bill to take police entirely out of politics?

A. Yes, sir.

Q. In what way is that accomplished by that bill; these gentlemen are not familiar with it?

A. Well, these men are appointed, and they hold their positions during their good behavior, and can only be removed upon charges preferred, and after trial, and not for political reasons or causes. In the four years that I was a member of the board, no man was discharged for a political reason.

Q. What have you to say, if anything, on the subject of the efficiency of the police force of the city of Louisville?

A. I believe that the efficiency of the police force of the city of Louisville now is so far in advance of any condition that it was ever in before, that it is hardly worthy of comparison; hardly necessary to compare it.

Q. Was that true in the month of November, 1899?

A. Just as true as it is to-day, efficiently managed and under a most excellent disciplinarian.

Q. I will ask you, as a matter of fact, if the police force as a body are all of one politics or rather of different politics?

A. When I was a member of that department, the board of public safety—

Objected to.

The chairman: It ought to be addressed to the situation in November.

A. I believe that there was a mixture with the preponderance in favor of the Democrats; Louisville having been a Democratic city for many years, it is natural that the larger number of the force were Democrats.

Q. What, if anything, do you know on the subject of the effort, if any there was, on the part of the officials of the city of Louisville to utilize the police for political purposes at the last election, or for any other purpose?

A. From my personal interviews with the members of the department, I knew that they were endeavoring to prevent them from being used at all, or taking any active part in politics, and especially in this election.

Q. I will ask you to state whether the effort in that direction was more or less at the last election than had been theretofore?

A. There was more talk about it than at any previous election, and I believe the result of that talk was possibly more strenuous orders than had been issued before, however the general orders of that department seemed to be quite full.

Q. Were you present at the testimony of Mr. McDonald this afternoon?

A. No, sir.

Q. What have you to say, if you know anything, on the subject about the bona fides or good faith or the non-good faith of the mayor and the officials on the subject of keeping the police out of politics the last election?

Objected to; objection overruled.

A. From conversations with the mayor, the chief of police and with Mr. Lyons, I was positive that they were determined to prevent the police from being—taking any part whatever in the election.

Q. Now, as a matter of fact, when the election came, were you in and about the city that day?

A. Yes, sir; I was in a buggy driving about the city the entire day, from seven o'clock in the morning until the polls closed.

Q. I will ask you to state what was the condition of the police department of the city of Louisville in the direction that we have been talking about?

A. It could not have been better. Wherever I went, there was no cause, no apparent interference, no apparent neglect of duties, no participation on their part or any member of it, in the election whatever, except to keep the people back a certain distance from the polls.

Q. Have you ever heard of a complaint from any Republican or anybody against the police on election day at the last election?

A. I don't remember having heard any, sir.

Q. From your observation and your knowledge of the people of our city, what effect, if any, did it have on them to call out the militia in the manner it was called, and the announcements with reference thereto made in the papers; if you have any knowledge on that subject, please give it to us.

A. Well, such knowledge as I have, or might have had, was derived from coming in contact with the people day after day and night after night, because I made a day and night canvass. The only effect that the introduction of the militia could have was to irritate the people; not such an irritation as would cause trouble, though a feeling of outrage.

Q. Do you know whether or not, Judge, there was any feeling amongst the people, or any knowledge amongst the people, as to whose interests the militia were being used in—in whose behalf, if any one?

A. I believed then that the militia was to be used in conjunction with the employes of the L. & N. Railroad Company for the purpost of taking possession of the polls for the Republican party.

Q. I will ask you whether or not that opinion was well seated in the minds of the public?

A. That, as I found it, was the prevalent opinion.

Q. I will ask you whether the arrival of ammunition and arms and gatling guns was duly announced through the public prints so the people would know it?

A. Yes, sir; and rather sensationally.

Q. In your opinion, what effect upon the voters of the city of Louisville did the importation of the militia and the gatling guns in Louisville at the time and in the manner that they were brought, have?

A. I believe, though I don't know of any particular person, that it kept many away from the polls. That belief is founded on my observation on election day, that there seemed to be fewer people about the polls except in the Second, Third and Fourth wards, where the German element can be found—fewer people there than ordinarily at elections—elections of any consequence.

Q. I will ask you, Judge, whether it had this depressing effect on the people especially of one party or the other, or both alike—what is your opinion on that subject?

A. Well, on the day of election, I believe the Democrats were very much depressed, and felt that they were on the verge of an assault from the militia.

Q. I will ask you what effect, if any, it had upon the people and the voters, and especially upon the Democrats when the order of injunction was issued by Judge Toney about mid-day of that day, if you have any knowledge on that subject?

A. Well, I have been participating in elections for twenty years, and I never saw any—witnessed anything on election day that seemed to have such a dumbfounding effect as that injunction. It was almost a disorganizing of the entire Democratic forces.

Q. Judge, did you know in any way in your travels amongst the people of our city the effect of the charge of Judge Evans, and the Federal matters generally, on our people?

A. That, coupled with the general impression that the Federal officers were to be used upon election day, I believe, aided in the keeping away a good many people from the polls, from fear of trouble between the Federal and city authorities.

Q. Judge, do you know anything or did you make any investigations upon the subject of the various headquarters of the Honest Election League in the different parts of the city and the private telephone wires, if any, they had, where they led to?

A. I don't know anything about that, except what I read in the newspapers and gleaned from those who were looking for the information. I don't know anything of my own—

Q. You don't know anything personally about it?

A. No, sir.

Cross-examined by Colonel Breckinridge.

Q. Of your knowledge, Judge Wilson, was there any man, if so, name him, who was prevented from going to the polls by the injunction by Judge Toney?

A. No, Judge, I don't know of any man, any particular man, I wouldn't attempt to speak of any person because I never looked at those people, and, of course, I don't think a man would admit that.

Q. Do you know of any man who was kept from the polls by the fact that the military was at the armory?

A. I don't know of any individual, but I believe that the falling off of the vote is due to that fact, the general impression—

Q. Do you know of any man that was kept from voting by the charge of Judge Evans?

A. No more than the effect, the general result, I don't know of any individual; no, sir.

Q. Do you know of any individual at all who was kept from the polls at Louisville by any one or all three of these causes?

A. I never met any individual whom I put that question to, or so stated.

Q. You were a candidate?

A. Yes, sir.

Q. You attempted to get out as large a vote as possible?

A. Yes, sir.

Q. You went to every poll and every part of the city so far as you could?

A. So far as I could, yes, sir.

Q. You tried to get as many persons out, I believe you said?

A. Yes, sir.

Q. Now, in that effort, did any man during that day say to you they wouldn't go to the polls, he wouldn't go to the polls because of any fear either of the military or of Judge Evans or of Judge Toney, or of all these put together?

A. No, Judge, the only person that I saw that day were those who were upon the streets. Those who did not vote I imagine remained at their places of business or at home.

Q. You had, the Democratic party, that day, and those that were in charge of the various precincts, had copies of the registration lists, did they not?

A. Yes, sir, at each precinct, I believe, Judge. I didn't investigate that question.

Q. You had of course, in some way, some organization—

A. Yes sir.

Q. To get out the vote? To know who hadn't voted, did you?

A. Yes, sir, there should have been.

Q. You had carriages and other vehicles, did you not?

A. I don't know.

Q. I don't mean you, but the party?

A. I don't know that they did. The funds were very short. I don't know that they had invested any money in that way.

Q. Do you know of anybody who in any way was approached to come to the polls and who gave as a reason for not going, any intimidation by either the military or Judge Toney or Judge Evans?

A. No, because I believed if I found that individual I would have attempted to have persuaded him to come with me.

Q. You did not find him?

A. No, sir; I was not looking for him.

Q. You did not, whether looking for him or not, you did not run across him?

A. No, sir.

Q. In answer to a question of Mr. Phelps as to the effect of the importation of the military from where was that regiment imported to Louisville?

A. I don't know. The presumption was that the militia were to be brought into Louisville. I know from the membership of it that it was made up of persons of the Louisville Legion.

Q. In fact, they were not imported at all? That was a regiment of Louisville?

A. I don't believe there was any of them imported, unless you can call the Governor an importation.

Q. And you would count him that day a part of the military?

A. Yes, sir—no, I didn't count him a part of the military. I thought on the contrary—

Q. I am speaking of the importation of the military. In point of fact that regiment was a Louisville regiment entirely?

A. I believe it was. I didn't go look at them that day, but that is my best impression.

Q. You do know the officers of that regiment, many of them?

A. Well, I know several of them.

Q. You know the colonel—Colonel Mengel?

A. Yes, sir.

Q. Lieutenant-colonel—Colonel Gray?

A. Yes, sir.

Q. I don't know who the majors are.

A. I know a great many of them.

Q. All you know are members or citizens of Louisville?

A. All that I heard of being connected with them that day.

Q. And all that were under arms or at the armory were citizens of Louisville?

A. I believe so.

By Mr. Phelps: I will agree on record that the soldiers were not brought here from any other place. I didn't mean to leave that impression.

A. I do not want it to appear that it was my impression to say that the soldiers were imported there, because I believed to the contrary. I believed they were Louisville people, but the presence of gatling guns and great amount of ammunition and the guns being shipped there, was all newspaper talk—common talk upon the streets.

Q. I don't know whether you were asked, did you see the military that day?

A. No, sir; I was in a different part of the city. I kept mostly above Sixth street that day and further to the east of that part of the city.

Q. You drove over the city, a large part of it I understood you to say, did you not?

A. No, not on election day. I rode during my canvass—I went over the city.

Q. But on election day?

A. I confined my visits mostly to the territory east of Second street and west of Shelby, to the river south, but occasionally I got down as far as Sixth street, but not more than two or three times.

Q. In the territory over which you did go that day, did you see any soldiers?

A. No, but I heard—

Q. I am not asking what you heard—did you see any soldiers?

A. No, I did not; I didn't see any soldiers under arms all day because I didn't go in that part of the city where they are said to have made their—

Q. The question I asked you is did you see any soldiers in that part of Louisville in which you were during the election day?

A. None under arms.

Q. Did you see any not under arms?

A. I am not positive whether it was on the day of the election or on the Sunday—the Monday or Sunday before, but I saw young men who are members of the Legion about town in their uniforms, possibly going to and from the armory.

Q. You don't know whether that was—is it your best judgment that was on election day or the day before?

A. No; I won't say that; I am not positive; I didn't charge my mind with it at the time.

Q. Did you see any soldiers in uniform with or without guns at any polling place in Louisville that day?

A. No, sir; I did not.

Q. Did you see any Federal marshals?

A. No, sir.

Q. At any polling place in Louisville that day?

A. Not to my knowledge, I don't know the Federal marshals.

Q. Did you see any Federal marshal making any arrests or interfering in any way with anybody at any polling place in Louisville that day?

A. Not at the precincts to which I went or which I visited, and if they had been there I don't know that I would have known them unless they had made some outbreak at that time.

Q. The question asked you is, to your knowledge, did you see any?

A. No, sir.

Q. That is, personally see any Federal marshal that you knew as a Federal marshal at any voting place to which you went that day?

A. I don't know a Federal marshal or a deputy marshal now in the city of Louisville, so I couldn't recognize—

Q. Did you see anybody that day acting as if he were a Federal marshal interfering in any way with the election?

A. No, sir; I can't say that I did, because I don't know any and didn't know any person who held himself to be or was a Federal marshal

Q. Did you see any persons interfere with an election claiming to be a Federal marshal?

A. No sir.

Q. Did you see anybody claiming to be a Federal marshal?

A. No sir.

Q. At what time were the injunctions that were issued by Judge Toney served upon anybody within your knowledge; not what you have heard, but within your knowledge?

A. I think it must have been—well, now, you restrict me here because all the knowledge I had about that was communicated to me at the different voting places as I would drive up there.

Q. When was the first information then, I will ask you?

A. Sometime after dinner, Judge, it would be impossible for me to say what time it was because I did not stop for dinner that day. Time hardly entered into the question at all.

Q. Give to the board as far as you can, with as much accuracy, the time that you first obtained information that an order from Judge Toney was actually served at any voting place?

A. It would be impossible for me to do that.

Q. I will ask you whether any order from Judge Toney was served that you know of, of which you received information on that day prior to four o'clock?

A. I heard it it seemed to me, shortly after the noon hour, and on that day, I can not say with any degree of certainty, I can not calculate the time for that day, but some time before the closing of the polls. Indeed, I think one of the newspapers, the Post, was circulated—

Q. I am not speaking of the newspapers; I am asking you of the information that you received at a polling place if there was any information given to you at a polling place?

A. Not to me, because the injunction was not served upon me. I was neither an officer nor in charge of any polling place, but I met a number of gentlemen driving about who the officers informed me had served them with notices.

Q. That still is not the answer, that is not the question I asked you. I asked you if you received information at any polling place of the service of the injunction, at that polling place, issued by Judge Toney before four o'clock?

A. I received no information from any person except that which came to me second hand, yet I did not see any person serve a notice.

Q. I didn't ask you if you saw the person. I asked you if you

received information at the polling place; you said you had gone to the polling place and got the information there. Did you receive information at any polling place in Louisville that an injunction had been served at that polling, an injunction issued by Judge Toney before the polls closed?

A. Yes, sir; I did.

Q. What polling place was that at which you received that information?

A. Well, that, the first, I can only tell you in what ward it was because I know how it impressed me when I first heard it. It was in the upper part of the Fourth Ward, somewhere near the center ward, at a precinct—one of the precincts south of Jefferson and north of Kentucky street. Now, I don't know which one it was but I know I immediately went to the other precinct to find out what was going on.

Q. Now, at what time was it that you received information at that precinct in the Fourth Ward, I believe you said?

A. Yes, sir.

Q. Fourth Ward—that an injunction had been served upon the officers of the polling place?

A. I can't tell you, Judge, it was some time before four o'clock; whether it was as early as three or as early as two, I can't say.

Q. What was that injunction, what was that order?

A. I never saw a copy of it; I only heard it was an order directing them to allow the Brown people to go into the polls.

Q. Brown people or Brown inspectors, or Brown challengers?

A. The Brown people, because I was not certain myself what they meant by it, whether it was to allow challengers in the polls or to allow inspectors, as it was not until after four o'clock, possibly as late as five before I saw what the injunction really was.

Q. How many polling places—at how many polling places did you receive information that such injunction had been served upon the officers before four o'clock?

A. I can't tell you how many I have seen, but oh, it appeared to me as if they were going in all directions. I heard of it at other precincts that I went to after I got the information.

Q. Did you know the officers by whom they were served?

A. I do not.

Q. Were they policemen?

A. I don't know. I have heard in some instances that the police had come here and stated that they had to let the Brown people in, but whether the police were serving injunctions or not, I don't know. I saw a number of citizens driving about the city, who I believe were the ones who were delivering them.

Q. I will ask you whether in point of fact you don't know that the police under—that the injunction served on the chief of police and the board of safety was not recognized by the chief of police or

the board of safety, or any order given to the police to execute it, until after half past three and after four?

A. I don't know; I didn't learn any of the details about the injunction until some time after four o'clock.

Q. I will ask you whether you did not know—

A. I have learned since then, but I didn't know them.

Q. I will ask you to state whether you do not know it to be a fact that the chief of police declined to have these injunctions served, or to obey the injunctions until after four o'clock and after a conversation that he sought with Judge Toney and had with Judge Toney after five o'clock?

A. I never heard anything about that conversation until I listened to the chief testify here, and never knew anything about the details of it until after the closing of the polls, when I went down town.

Q. You say that the order of injunction seemed to disorganize the Democratic party?

A. Yes, sir.

Q. Can you explain to this board how an order of injunction that merely directed that the inspector belonging to the Brown party should be admitted into the booth to see that the vote was honestly counted, could disorganize the Democratic party in the city of Louisville?

A. I believed, and I believed it to be the judgment of the Democratic party, members of it who were in the lead, that the introduction of the Brown representatives was an introduction in the polls of the representatives of the L. & N., and of the Republican party under another name, and that the introduction of the Brown people was merely the introduction of people with funds sufficient to corrupt, if corruption could be worked upon the officers. That was my personal fear.

Q. Your idea was that the thing that would happen would be that if the Brown inspectors got in there they would buy the officers of election, and buy the Democratic inspectors that were already there by virtue of the appointment of the Democratic party, and that disorganize the Democratic party in Louisville?

A. Oh, no; not quite so far.

Q. Please explain?

A. You and I both know practically—those who are politicians know that it has occurred—you and I have both suffered from them, I imagine—every man who has ever run for office has—you and I and every other man who runs for office know how jealously we guard organizations. It even goes so far you know as members of legislative bodies.

Q. My experience is not equal to yours, Judge, and I don't know your acquaintance with the Legislature, I hope it is not accurate—

A. Only from what I read in the newspapers.

Q. You don't come from my part of the country. Do you mean

to tell this board that the Democratic party in Louisville, as organized in Louisville, believed that the presence of an inspector to see an honest count at the precincts would so affect the Democratic party that it actually disorganized it during the day of election—is that the statement you make to this board?

A. I mean to say that all the safeguards around all organizations are jealously guarded, so far as my experience goes; that in a large community, 170 or more persons, and the selection of workers of all kinds and officers, that the opportunity to debauch them is one that we try to prevent.

Q. And the grounds upon which, therefore, you base your conviction not only that this would disorganize the Democratic party, but that it had actually disorganized the Democratic party, is that the Brown inspectors would have an opportunity by having the money of the Louisville & Nashville road to buy enough judges and enough inspectors at the various precincts in Louisville to change the election returns?

A. Not that alone; the threatened use of the military, the introduction of other than regular officers, the threatened use of United States marshals, and all of those assaults at one time were calculated to disorganize any persons—

Q. If I understand you, did you not say that the disorganization of the Democratic party was the direct result of the Toney injunction?

A. That was one of them.

Q. Only one?

A. That was one of the numerous—think that had a far-reaching effect.

Q. Were there any injunctions issued by Judge Toney to permit Republican inspectors into the polls?

A. I don't know, Colonel; I never investigated that.

Q. Did you know in the city of Louisville of any polls where the Republican inspectors were not allowed to go into the polls to witness the count?

A. No, sir; I did not.

Q. Don't you know that that was published in the press and from the current history, I believe is the phrase, from the current history of the times in Louisville, that the Republican inspectors in many of the precincts were refused admittance, and that others were forcibly ejected from the polls?

A. If that information was from the newspapers, it was from those newspapers that were continually trying to engender ill feeling and cause disturbance. I don't know of a single instance myself, and do not remember having read of a single instance in which a Republican inspector was refused admittance to the polls.

Q. I will ask you to state whether you don't know, either from your personal knowledge, or from reading the newspapers, that in many of the polls in Louisville, there were Republican inspectors

ejected or refused admittance upon the ground that persons holding what were said to be Hambrick certificates were acting as Republican inspectors?

A. I don't know personally of any instance of that kind. I have heard the charge made.

Q. I will ask you if you don't know, either from your personal knowledge, or from the current history of that election as shown in the papers, that there were at a considerable number of the precincts in Louisville, Democrats and men who were voting—who were supporting Mr. Goebel who were admitted as inspectors nominally of the Republican party, professedly holding authority from what was known as the Hambrick committee?

A. I heard that, but I don't know it.

Q. I will ask you to state whether it is not true—whether you have not read it, if you don't know it personally—that in those precincts where that occurred, the Republican inspectors holding proper certificates from the organization known as the Republican organization, were refused admission?

A. Not to my knowledge; I have heard that charge.

Q. You say you were at one time member of the board of safety—I believe you call it board of public safety?

A. Yes, sir.

Q. And that you were the draughtsman of the metropolitan police act?

A. Mr. O'Sullivan and myself.

Q. And that under that act the politics of the policemen or of the applicants is not a qualification or a disqualification for office?

A. No, sir; it is not.

Q. I will ask you to state whether in your knowledge in the last two years there has been any Republican who managed to have the necessary qualifications and received an appointment from the present board of safety on that force?

A. I don't know, Judge, but I imagine that there were no more Republican policemen appointed than there were Democratic storekeepers under the Republican organization.

Q. I agree with you; I judge so. I would rather take it for granted, I ain't a witness. But your idea is that the metropolitan police bill is so drawn as to be non-political, and so executed that a Republican applicant never gets an appointment?

A. If there was a Republican board of public safety, or if party lines were not strictly drawn, I take it for granted that as many Republicans could get on as any one else.

Q. I ask you in the last two years, do you know of any Republican that has managed to get on with a Democratic board of safety?

A. No, I do not, and none would have gotten on with me had I been on.

Q. And when you were a member of the board, that was the rule, was it not?

A. There was no rule, I would not have recommended a Republican for a position on the police force when I could find a Democrat that was good enough to go on it.

Q. So that when you said to this board that the policemen were kept out of politics, and that with the board, a policeman's politics did not form a part of the qualifications, you did not mean to be understood that practically any Republicans got on that police force either under your administration, or under Mr. Weaver's administration?

A. I did not mean to create the impression, Judge, and I did not mean my answer to say, that that bill offered inducements to Republicans to get on the force under Democratic officials. I do mean to say, do mean, and did mean and do mean to say that under the provisions of that act the members of the force are perfectly protected from political influence. Once on there, their positions are safe. In Louisville, as I imagine in all large cities, the difference in parties and the elements of the parties, are as great as the difference between the parties themselves.

Q. When was the board of safety, of which you were a member appointed?

A. In 1892 or '93, I believe.

Q. You held four years?

A. Yes, sir.

Q. Who appoints the regular police?

A. The board of public safety.

Q. Who appointed them before 1893?

A. The police commission, composed of a committee made up from the board of aldermen, the board of councilmen, with the mayor ex officio of it.

Q. There has been then a Democratic board of safety for six years?

A. Yes, sir.

Q. Before that, there was a Democratic mayor and a Democratic committee?

A. Yes, sir.

Q. Have you any knowledge of any Republican getting on the police force in the last eight or ten years?

A. No, I was a member of the police commission before the board of public safety was created.

Q. How long were you—

A. For one year.

Q. That would run your service five years?

A. Five years.

Q. And during your five years, I understood you to say that you were never guilty of any such malfeasance in office as letting a Republican be appointed?

A. So far as my personal nominations are concerned, none were that I know of. I don't know what the politics of those were that

my brother members on the board placed on or nominated.

Q. Your brother members were members in good and regular standing of the inner circle of the Democratic party, were they not, Judge?

A. They were good Democrats.

Q. And they recognized the cardinal principle which you have laid down in the selection of policemen and other officers by good Democrats?

A. Judge, I hardly think that is fair.

Q. I take it back then.

A. I don't mean your question is not fair, but I don't believe that that impression is fair. A Democratic administration, like a business house—a man, in my opinion, would show very poor judgment in taking persons and placing them in positions where they would have an opportunity to injure, if they saw fit.

Q. Don't understand me as criticising your official conduct at all or differing with you. I am not prepared to enter into any disputation as to whether that is the proper thing. What I want to get at—you have stated to this board that the police were composed of Republicans and Democrats?

A. They were.

Q. I want to get at what opportunity, under the practical operation that has been in Louisville for some years, there was for any Republican to get on that board, so that we may judge of the value of your estimate of the mixture of that police force?

A. Judge, I believe that at the time that I was appointed on that board, there were thirty-eight or forty Republicans on the force.

Q. Out of how many?

A. Out of, I believe at that time the force numbered about 150 or 160; that is, the patrolmen.

Q. That has been seven years ago?

A. Six years ago now.

Q. That was 38 or 40 out of 160?

A. Yes, sir. I don't know how many of them have been Republicans, but men often change their politics after they get a position.

Mr. Phelps: That needn't go in.

Witness: I didn't mean that as a reflection.

Mr. Breckinridge: I know he didn't mean it on me, because it never happened. Whatever change I made was after I got out of office. How is it about the fire department? Is it as absolutely non-political as we have discovered the police department to be?

A. There were no rules regulating the fire department except those prescribed by ordinance and by the board of public safety.

Q. So they get their appointment through the same source that the policemen do?

A. Yes, sir.

Q. In your judgment, is the fire department of Louisville composed of about an equal division of Republicans and Democrats?

A. I should think not. I don't know but I don't think that it is, or anything like an equal division.

Q. Do you think there were any Republicans in it at all that you know of?

A. Yes, sir; I believe there are Republicans in it.

Q. Sure enough Republicans, or Hambrick Republicans, or these Republicans of which you have just spoken that change their politics when they get into office?

A. It would be hard to tell, Judge. I was on the board of public safety when the political religious furore swept over this State, and I was very much surprised then to find how many Republicans we had in our employ until the Republican religious party drifted out a little bit, and then they showed their colors again.

Q. What colors did they then show?

A. They came back to the Democrats because they were holding positions under Democrats.

Q. But you don't mean to say to this board that when there was a religious wave your policemen were Republicans?

A. A political religious wave.

Q. And when the religion quit, they were Democrats?

A. I mean to say that when the general council of the city of Louisville became an A. P. A. Republican general council that there were a great many converts in the branches—different branches under the control of the board of public safety.

Q. Did you say that you considered the appointment of any officer to the police force and to any office that was not a Republican, would injure the Democratic party?

A. No, I didn't say; I didn't mean that. I said I felt that the same rule applied to political departments as would apply—at least, I meant to say—as applied to business department, that in the selection of our subordinates we would select those who were in sympathy with us, and not those who were not in sympathy with us, and might have an opportunity to do some injury to us.

Q. In that election in November, was there an administration ticket in the field, whose election would be to the interests of those policemen and firemen?

A. I take it for granted that the election of the Democratic ticket, which was the only ticket in the field—I beg your pardon, excepting the Brown ticket, which we never considered as being in the field at all—the election of the Democratic ticket was essential to the preservation of the positions of the Democrats.

Q. That is what I mean—that was an administration ticket?

A. No; there was a Democratic ticket; I can't say it was an administration—there was a local Democratic ticket.

Q. For which then—I will put it that way—for which the administration, the mayor, and the board of public works and the chief of police were earnestly in favor of?

A. I never received any positive evidence of their earnestness, else, I think, the result would have been different.

Q. I hope I haven't touched a factional sore in the party?

A. None at all.

Q. I didn't mean to do that?

A. Not at all.

Q. Your judgment is, if they had been more earnest, there would have been a better election?

A. No; I think the result would have been a little different. Every man has his friends, and when a man is sincerely interested, earnestly interested in an election, we know they generally get out their friends to a greater extent.

Q. Is it not true that this police force is essentially the same police force that was in office on the day of the Democratic primary election in June?

A. I believe it is.

Q. The same gentleman was mayor?

A. Yes, sir.

Q. On both of these periods?

A. Yes, sir.

Q. The same gentlemen constitute the board of public safety?

A. Yes, sir.

Q. The same gentlemen chief of police?

A. Yes, sir.

Q. Were you a candidate at that primary?

A. I was.

Q. I am not sufficiently familiar with the politics of Louisville. Were there two tickets at that time?

A. There were.

Q. That was a Democratic primary, was it not or a Democratic—

A. Yes, sir.

Q. Under Democratic authority—called by a Democratic committee?

A. Called by a Democratic committee.

Q. And all the candidates then were Democrats before a Democratic primary?

A. Yes, sir.

Q. And there were two tickets?

A. Yes, sir.

Q. What were those two tickets called; how were they?

A. One was the Whallen ticket, and the other was the anti-Whallen ticket.

Q. Was the anti-Whallen ticket also known as the administration ticket.

A. Necessarily.

Q. There were the administration Democrats on one side, and what you called the Whallen Democrats on the other side?

A. Yes, sir.

Q. And you belonged to the administration ticket?

A. I was.

Q. You were on that ticket?

A. Yes, sir.

Q. And it was the same general police force that day that was at the election in November?

A. I imagine so.

Q. Practically so?

A. Yes, sir.

Q. Do you know whether the police as a body, took any part in that election?

A. I know the police as a body did not take a part. I know that the charges against the police in that election are unfair and unfounded.

Q. What were those charges which were unfair and unfounded?

A. Mr. Dunlap and Mr. Whallen discovering about 10 or 11 o'clock in the morning that the storm was against them—

A committeeman: I would like to remind this gentleman that this board has not been sworn to try the contest at the June election.

Q. I will submit to the board. When were you first informed that the First regiment would be assembled at the armory.

A. I don't know, Judge. It was a matter that was public property, and the question of the military—introduction of the military ran through a period of some days.

Q. Had you any part in any of the conferences out of which sprang the proclamation of Mayor Weaver?

A. I don't know; I don't remember whether I did or not. I don't think that I attended any of them, but I endorsed it, and was glad to see it.

Q. Why is it that you have doubt, Judge, as to whether you were at any of those conferences?

A. Because I don't remember, Judge.

Q. You just don't remember?

A. Yes, sir.

Q. Maybe I could refresh your memory. Were you present at any conferences with my brother Phelps and the mayor and any members of the board of public works in which this was discussed, —this proclamation was prepared and agreed upon?

A. I don't believe I was. I believe I knew of its publication or that it was going to be, but I don't think I was present when there was any preparation or discussion of it.

Q. How did you get the information that the proclamation was to be published?

A. Well, the night before it was published I obtained the information, as we get information generally, from some of the acquaintances of the mayor; I don't remember whom.

Q. You don't know how you got it?

A. No, sir.

Q. In your judgment, the election was an entirely quiet election?

A. Oh, yes.

Q. There were no difficulties at the polls?

A. None whatever.

Q. No interference in any of the polls that you know of by the police?

A. None where I attended, none that I heard of.

Q. No arrests made that you know of by a United States marshal or anybody claiming to be a United States marshal?

A. Not to my knowledge; I had heard of it, but I didn't know it.

Re-direct examination by Mr. Phelps:

Q. The gentleman expressed some surprise that Democratic officers had appointed Democratic police. I will ask you if you know in the history of the times or in the history of the world of a Republican ever appointing a Democrat to anything?

A. I have never heard of it to my knowledge; that might have occurred.

Q. You were asked whether you saw the militia on election day. I will ask you whether or not the knowledge that the militia was under arms and liable to be called out at any minute, was well disseminated amongst the people?

A. It was, and I believe that impression was general, and I believed it was to be so myself.

Re-cross-examination by Colonel Breckinridge:

Q. I wanted to ask, were you on the board of safety at the election of 1897?

A. I was.

Q. Do you know that there was a part of the Legion ordered out—ordered to the armory, to assemble at the armory, at the request of General Castleman and by the order of the Governor?

A. Not until this investigation came up.

Mr. Phelps: Did the people of Louisville know anything about that?

A. I can only speak of my own knowledge; I didn't know anything about it.

Mr. Breckinridge resumes: You say you never heard of any Democrat being appointed by a Republican?

A. Possibly if I would search the annals of history I might.

Q. Don't you know that Governor Bradley has appointed quite a number; for instance, appointed Mr. Willis on the board of equalization?

A. No, sir, I didn't know he had appointed him on that.

Q. Appointed Dr. Wiley superintendent—

A. I knew who Mr. Willis was, but I didn't know he was an appointee of any kind.

Q. Appointed Mr. Wiley superintendent of the lunatic asylum at Lexington?

A. I didn't know what were Dr. Wiley's politics.

Q. Appointed Dr. Tom Satterwhite at the head of the board of commissioners?

A. I don't know; I didn't know he was an appointee of Governor Bradley's at all.

Q. I suppose you know that Judge Jackson, of Tennessee, was appointed by a Republican President?

A. I don't remember when he was appointed; I remember his appointment; I presume it was by a Republican.

Q. So that they do sometimes have sense to appoint a good man to office?

A. They might return the compliment once in a while.

Fred Zahner, a witness called for contestant, being duly sworn and examined by Mr. Phelps, deposes as follows:

Q. Where do you live?

A. Louisville, Ky.

Q. How long have you lived in Louisville?

A. Twenty-eight years.

Q. Were you at or about any election polls on the last election day, November 7, 1899?

A. Yes, sir.

Q. Do you know of any threats being made by any person of Federal interference on that day?

A. Yes, sir.

Q. Who did you hear make the threat; and what threats did you hear him make?

A. Mr. Marshall.

Q. What Marshall?

A. Running for Lieutenant-Governor.

Q. John Marshall?

A. Yes, sir.

Q. What threats did he make on the subject of Federal interference?

A. In the morning he came into the polls with a colored man and asked if I refused to let him vote; I told him no; I refused to let nobody vote, and he left. The trouble is that this colored voter had his vote challenged. I told him that he would have to get two witnesses before we could let him vote. He went out and came back and said he could not get any witnesses; I told him we would not let him vote unless he got the witnesses; he went out and came back about three times, when Mr. Marshall came in and he said that he went down with this man, and that he had his key and that he thought that he was entitled to vote. Mr. Marion Miller told me that Mr. Marshall had went down to find out about this man, and advised me to let him vote; that Mr. Marshall was a perfect gentleman and he would not say he was entitled to vote if he was not. Mr. Marshall then said to us, "I wish you had refused to let this man vote, I would have had you before the United States Court."

Q. Who said that?

A. Mr. John Marshall.

Q. Do you know what effect, if any, the presence of the militia in Louisville had upon the people?

A. Only from hearsay.

Q. From hearsay, do you know what effect it has?

A. I could relate an instance of Mr. Henry Oberhulsen, and Mr. Louis W. Hugelmeyer, who keeps a grocery at the corner of Sixth and Walnut. He said he did not want to go to the polls to vote if there was going to be any trouble; I told him it was a very quiet precinct—our precinct is a very quiet precinct out there—and he said he would come and vote; and then Mr. Oberhulsen was speaking to me about not going to vote; he said that he had read in the papers about the militia being down and all that; I insisted upon his going and told him I was perfectly sure there would be no trouble; I went the second time and told him to be sure and come and that morning he was at my house. I think I went to the polls along close to seven and he came in in the morning to get the order from the house there, and I told him to be sure to come up and vote.

Q. What was the cause of their alarm; what were they afraid of?

A. I went back to Mr. Hugelmeyer's place and they were talking—I could not tell who the people were—and a number were talking about the reports in the papers and Mr. Hugelmeyer said he was not going over to vote if that was so.

Q. What report?

A. The report of the militia being called out. I said I didn't believe there would be any trouble at this precinct. It is a very quiet precinct.

Q. I will ask you if the fact that the militia was to be called out was generally known by the people around the town?

A. I think it was known everywhere; I think so from the people I met with.

Q. I will ask you whether the members of the militia themselves were not gathered from all parts of the city?

A. So I heard; I did not see any around our poll.

Q. Was the fact that a large amount of ammunition, muskets, bayonets, and gatling guns were brought to Louisville just before the election were known to the people?

A. According to my impression, I think every voter knew it.

Q. What effect did you think that had upon the voters of Louisville from your observation?

A. I could not help but think it had a depressing effect from the way they spoke.

Cross-examination by Colonel Breckinridge.

Q. What is your occupation?

A. Engineer; I work for the engineering department of the city.

Q. One of the employes of the city?

A. Yes, sir.

Q. You receive your pay from the city treasury?

A. Yes, sir.

Q. What is the precise work you do?
A. Surveying the streets.
Q. What was your occupation last November?
A. The same as now.
Q. How long have you been an employee of the city?
A. Been employed since the first of April or first of May.
Q. What was your employment before that?
A. I ran a livery stable.
Q. Where?
A. On Market between Brook and First.
Q. How long?
A. Since 1897.
Q. What was your occupation before that?
A. Ball player.
Q. Professional ball player?
A. Yes, sir.
Q. For how long?
A. For two years.
Q. Before that?
A. I was employed by the Pennsylvania Railroad Company as a clerk.
Q. Born in Louisville?
A. Yes, sir.
Q. Lived there forty-eight years?
A. No, sir.
Q. Didn't you say you lived there forty-eight years?
A. No, sir; twenty-eight.
Q. What was the name and the address of the first gentleman whose name began with an H.
A. Louis Hugelmeyer.
Q. What is his address?
A. Right on the corner of Sixth and Walnut; runs a grocery there.
Q. Is he alive?
A. Yes, sir; he was, anyhow, this morning.
Q. You saw him this morning?
A. Yes, sir.
Q. Able to travel?
A. Yes, sir; he wanted to come to Frankfort with me to see some of the excitement.
Q. He didn't come?
A. No, sir.
Q. You don't know of any reason why he did not come?
A. No sir; I don't think his wife would let him come.
Q. He did vote?
A. Yes, sir.
Q. He was not scared off?
A. No, sir; I did not say he was.

Q. He did vote and he is alive?
A. Yes, sir.
Q. And although quite alarmed at the troops being in the armory, he wanted to come up to see the excitement here?
A. No, sir; he just said he would like to come.
Q. Now the other gentleman?
A. Mr. Oberhulsen.
Q. Where is his place of business?
A. He works for Mr. Hugelmeyer.
Q. His address is the same?
A. Yes, sir; he works for him; he does not live there.
Q. You gave the number of the grocery?
A. The corner of Sixth and Walnut; he lives out near Sixth and Chestnut.
Q. This other gentleman; is he alive?
A. Yes, sir; he was this morning.
Q. You have not heard of any deaths since then?
A. No, sir.
Q. He able to travel?
A. Yes, sir.
Q. Do you know of any reason why he could not come to testify about their alarm?
A. They didn't know anything about me mentioning their names.
Q. Do you know of any reason why he could not come?
A. He was at work.
Q. Did he vote?
A. Yes, sir.
Q. He was not so scared that he could not vote?
A. Oh, no, sir; not necessarily.
Q. Anybody else intimidated in your knowledge that day by the militia?
A. I could not name the people.
Q. Can you name anybody that was so scared that he didn't vote? I don't want those that were scared so that they voted, but some one who was so scared that he didn't vote.
A. No, sir.
Q. This Federal interference; what was the name of the colored man?
A. McCutchen.
Q. What was his first name?
A. I think Henry McCutchen.
Q. How often did he apply for the privilege of voting?
A. Two or three times.
Q. Wasn't it three times?
A. No; I could not say.
Q. You were judge of the election or sheriff?
A. Judge.
Q. I will ask you whether this man, Henry McCutchen, did not

produce two colored witnesses to the fact that he was a voter at that place; whether you did not refuse to allow him to vote upon the ground that he had to have white witnesses and not colored witnesses?

A. I never asked no one to get white witnesses.

Q. I will ask you whether he was not registered and whether you did not know that he was on the registration list when you refused to let him vote?

A. Yes, sir.

Q. I will ask you whether it is not true that after you refused to let him vote when he swore himself and you refused to let him vote, if he did not go and bring two white witnesses and if one of them did not testify he was a legal voter and the other one did not live across the street out of that precinct, and that you did not say to him that that witness could not swear to it because you took no witnesses who lived out of that precinct?

A. No, sir, not from Mr. McCutchen.

Q. Did you do that with any colored voter?

A. There was one colored man who brought a white man that I didn't know, and nobody else in the polls didn't know him.

Q. I will ask you whether you did not adopt the rule that day that no negro could vote about whom you chose to have a doubt, unless he proved his right to vote by white witnesses and by witness who lived within the boundary of that precinct?

A. No; we did not make them have white witnesses at all. I did not ask any one to get white witnesses; and so far as choosing to challenge the vote there was no choosing on my part. I told every one that came there, that there was any doubt about voting, I told them if they could get two reputable witnesses, we would let them vote.

Q. No man was allowed to vote unless he could get reputable witnesses?

A. That was the rule on both sides.

Q. I will ask you if that person in which Governor Marshall was interested had not been twice refused the right to vote, first, because one of the witnesses was colored; second, because one of the witnesses lived out of the precinct and that Governor Marshall came and said that he had taken the trouble to go see where that negro lived, that he saw him take out his key and open the door, and felt sure that he lived there; I will ask you whether you did not still refuse to allow him to vote when Mr. Miller interposed and said to you that you had better let that negro vote after Mr. Marshall had looked into it?

A. No, sir; when he first came he had no witnesses at all; and I told him I would have to challenge your vote.

Q. Why did you have to challenge his vote?

A. Because it was marked on the book that he did not live at this place.

Q Marked on the book by whom?

A. By people that made a careful canvass of that ward; I did not have time to do it; they had gotten the registration list, and inquired of every man if they lived there.

Q. Did anybody challenge this negro?

A. Yes, sir.

Q. Who challenged him?

A. Mr. Cunningham.

Q. Didn't you challenge him yourself?

A. No, sir.

Q. Did not you challenge him from that list yourself?

A. No, sir, not I. I did not challenge any of them.

Q. When he came back?

A. He came back with a man named Rose, and this time we challenged; and he said that he lived where Mr. McCutchen lived; in the same room with him; and I asked McCutchen if he lived there, and he said no. He went back and Mr. Marshall came back with him, and while he was talking Mr. Miller came in and he said I will let this man vote because Mr. Marshall has taken the trouble and he saw that he lived there, and he supposed that he lived there, and he says I think I would let him vote.

Q. Who was this man Miller?

A. He is in the spoon business—

Q. What official capacity was he acting in at that time?

A. Councilman.

Q. What was he doing on the inside of the booth giving you advice at that time?

A. Mr. Marshall had no right there. Mr. Marshall came in and he came in after him.

Q. It was Mr. Miller's advice that determined you to allow that colored man to vote?

A. I didn't know Mr. Marshall. in fact, I never saw the man before; I didn't know he had any right to come in there; I didn't know why he would come and make it his business; I didn't know he was running.

Q. You did allow the negro to vote?

A. Yes, sir.

Q. Mr. Marshall made no threat of any sort until the negro had voted?

A. He says, it is a good thing you didn't refuse him.

Q. That was after the negro voted?

A. Yes, sir.

Q. Up to the time you decided as judge that the negro could vote, Mr. Marshall had made no threat?

A. No, sir; none in my presence.

Q. After you had decided that the negro could vote, Mr. Marshall

said it was a good thing, and that he would have taken you into the United States Court?

A. Yes, sir.

Q. And that was the only threat of Federal interference that day?

A. Yes, sir.

Q. All that happened in your hearing?

A. No, sir, a policeman was arrested and the clerk was arrested.

Q. That is the same good-looking policeman who was here two or three days ago, named Ballenbaker, or something of that kind?

A. Yes, sir, he is a pretty good-looking man.

Q. The policemen of Louisville are all good men?

A. Some persons don't seem to think so.

Q. Do you know of the military being on the streets of Louisville that day from your personal knowledge?

A. I seen two men when they came in to vote who told me they had seen them.

Q. But you saw none?

A. No, sir.

Q. They didn't come to your precinct?

A. No, sir.

Q. No soldiers with any injunction to serve upon you?

A. No, sir.

Q. What time was the injunction served upon you, if one was served upon you?

A. Shortly before four o'clock.

Q. Who served that?

A. Dr. Enright came with the injunction.

Q. Why was Dr. Enright coming with the injunction.

A. Some gentlemen came there; I don't know who.

Q. What was the injunction?

A. To let the Brown inspector in.

Q. Was there any other injunction?

A. None that I remember of.

Q. Who were the officers of election at your precinct?

A. Mr. Davis, Mr. Fish, Mr. Cunningham and Mr. Tiller.

Q. Mr. Cunningham was the man who challenged the votes?

A. He was challenger.

Q. The question is, who were the officers of election?

A. Mr. Cunningham was challenger; I was judge; Mr. Tiller was clerk; and Mr. Davis was sheriff for the Republican party; and Mr. Carrollton.

Q. What Davis?

A. Mr. William Davis was superintendent of the school board and Mr. Fish was the Republican sheriff.

Q. What precinct and ward is that?

A. Third precinct, Eighth ward.

Andrew Krankel, a witness called for contestant, being duly sworn, deposed as follows:

Examined by Mr. Phelps:

Q. What is your business?

A. I am captain of police in Louisville.

Q. How long have you been a member of the police force of Louisville?

A. Thirty-three years and six months.

Q. What office do you now hold in the police force?

A. Captain of police.

Q. Have you been a member of that force for thirty-three consecutive years?

A. Yes, sir.

Q. Were you captain of the force in November in 1899 at the last election?

A. Yes, sir.

Q. I will ask you what effort, if any, was made on the part of police authorities, to keep the police out of politics, and what was done, if anything, by you and the other police officials in the direction of regulating the police on election day?

A. We got an order four or five days before the election, sent to each station house, to be read to the different platoons, they were to be read three times in succession; we read that order nine times before the day of the election.

Q. Who did you read it to?

A. To the policemen, sergeants and lieutenants; we read it to them again the morning of the election; and then instructed,—told them that we wanted that order enforced to the letter; and we would hold every man responsible, stationed at the precincts, not to interfere in the election one way or the other, only as peace officer; and if they got into trouble they would have to stand the consequences.

Q. I will ask you whether the order—Col. Haager has heretofore the order and I will not take the time to read it now—whether that order was enforced in good faith, or had any string to it?

A. It was enforced in good faith, and so understood by the police.

Q. Taking yourself as captain, how many police have you charge of as captain?

A. I have about 25 men.

Q. Now what did you do personally in the direction of keeping your men from having anything to do with interfering with the people on election day?

A. I stationed them; first we answered roll call at 6 o'clock in the morning; and I stationed them all at precincts; we told them to go there and keep order and not interfere with anybody, and to take no order from anybody only from headquarters; and they went to the precincts and stayed there until the closing of the polls that day—that evening.

Q. What instruction did you give your men on the subject of the election?

A. I give them instructions; I first read the order to them not to interfere in the election; not to take any part in the election; and after I read the order I told them,—says I this order must be obeyed to the letter, and any man violating that order will be held responsible, will be punished for the violation of the order.

Q. I will ask you whether in taking the course which you took

A. I took it in good faith.

Q. It has been charged here that the officers and officials in charge of the police force were in a conspiracy—had a secret arrangement, by which they would use the police to intimidate voters, and to break up the election?

A. Never such a thing; no conspiracy; no understanding about anything of that kind.

Q. Was there any effort or any intention to do anything of the kind?

A. No, sir; none whatever.

Q. Captain, I will ask you whether you knew of the arrangements that were made previous to the election for preparing the armory, stocking it with ammunition and guns and things of that kind?

A. I heard it discussed on the streets among the people, and saw it in the papers.

Q. I would ask you whether or not the people of Louisville, as my friend says the plain people of Louisville, knew of the fact and discussed the fact that arrangements of this kind had been made?

A. Yes, sir; I heard it on the corners and in street cars; and people asked me about it.

Q. As an old officer having been on the force 33 years, I will ask you what effect, if any, the preparation of that military—providing the temporary armory, and stocking it with guns and the calling out of the militia had on the people of Louisville?

A. I think it had a bad effect; my opinion is it kept the people from voting.

Q. Give us your reason for that opinion?

A. My reason the calling out of the soldiers; the interference of the Federal judge, I think would intimidate people and keep lots of them from the polls in my opinion.

Q. I would ask you whether in all your experience in Louisville—how long have you lived in Louisville?

A. I was born there.—55 years.

Q. In all of your experience in Louisville, whether you ever have known before of the militia being called out and gatling guns and ammunition being brought into our city on election day?

A. No, sir.

Q. Did you ever hear of such a thing before?

A. No, sir.

Q. I will ask you whether or not the knowledge of these things

being done, and the alarm that you have spoken of, was general amongst the people, or whether it was confined among a few?

A. It was talked of by a heap of people. I heard it through different parts of the city; being discussed about the Federal Judge,—about United States marshals and soldiers, United States court, being taken before the United States court which people have a dread for.

Q. Was it known by the people of your party or people of any particular party, who were in charge of the soldiers?

A. Yes, sir, it was under the charge of a Republican governor and a Republican colonel.

Q. I will ask you whether it had the effect of backing up one crowd and hacking the other crowd?

By Colonel Breckenridge: Don't you think that is leading?

Q. If you object to it, I will put it in another form. What effect did it have upon the Democrats and why?

A. The kind cowed them a little.

Q. Why were they specially cowed by it?

A. Dread of the United States court; dread of getting hurt going to the polls.

Cross-examination by Colonel Breckinridge:

Q. Is this the only time in your knowledge Captain, since you have been on the police force of Louisville troops have been assembled at their armory on election day?

A. I don't know of my own knowledge, Colonel, whether any assembled there or not; I have heard it said that there were.

Q. Don't you know that they have been assembled quite often on election day?

A. No sir, I do not; not personally.

Q. Did you know it this time personally?

A. No, sir, I did not see them.

Q. Your knowledge this time is exactly the same knowledge you had before?

A. Yes, sir; I didn't see them, only what I heard.

Q. Did you hear it?

A. Yes, sir; I heard they had a squad of soldiers at the armory on Seventh street; whether they did or not I don't know, I didn't go.

Q. Was there a gatling gun or other gun, there at the election in 1897.

A. Not that I know of.

Q. Did you hear whether there was or not?

A. I did not.

Q. Do you mean to say there was a gatling gun and ammunition brought to that city on election day?

A. So I have heard.

Q. On the day of the election?

A. No, before the day of the election.

Q. You don't mean to say there was anything of that sort done on election day?

A. No, sir; I didn't hear of any gatling gun, or any ammunition brought there the day of the election.

Q. Do you know whether there was any more ammunition brought there this time for these soldiers then has been customary, to be kept at the Legion for the last fifteen or twenty years?

A. I don't know whether it was customary to keep it at any time.

Q. It was a very quiet election, was it?

A. Very; yes, sir.

Q. No interference anywhere with the polls by the police or anybody else?

A. No interference with the polls, because we had no complaint from either Democrats or Republicans so far as the police are concerned.

Q. Any interference in your district by anybody?

A. No, sir.

Q. Any complaint made to you from the polls?

A. No, sir; I didn't have a call at my station house that day—the whole day.

Q. What particular section of Louisville that was covered by your squad or company?

A. From Fourteenth street west to the city limits; and from the river south to Chestnut.

Q. Fourteenth west to the city limits—that would be down that way (indicating); in that district you saw no soldiers?

A. No, sir; I didn't see a soldier that day.

Q. Saw no Federal marshals?

A. If I saw one, I would not have known him; I don't know a Federal marshal of the city of Louisville.

Q. You didn't see any man who looks terrifying; or who looked like a Federal marshal?

A. No, sir.

Q. No interference reported to you done by any marshal?

A. No, sir.

Q. You were captain of police in 1897?

A. Yes, sir.

Q. That was the time at which Mayor Weaver was elected?

A. Yes, sir.

Q. What effect did the soldiers have at that election?

A. I didn't see any; I didn't think we had any.

Q. Governor Bradley was then Governor?

A. Yes, sir.

Q. And they were called out by his order, or do you know?

A. I don't know whether they were or not.

Q. You don't know anything about that?

A. No, sir; I don't know whether he called them out; if he did I never heard of it.

Q. Do you know captain, anybody that day who was intimidated; if so, will you please name him to the board?

A. No, sir; I don't know anybody that I know personally.

Q. Do you know anybody that day who was entitled to vote, as far as you know and did not vote because of the Federal court or of the militia?

A. Not to my knowledge.

Q. Do you know of anybody whose vote was lost that day, if so, please give his name to the board, by reason of the Federal court or by reason of the militia?

A. I could not, sir.

Q. At what time was there put into your hands, if it was put into your hands, any injunction to serve upon any officer of the election?

A. The first telephone I got from the chief of police was—I could not state the time exactly—it was along about 4 o'clock, probably a little before four, to send—I could not even tell you the number of precinct—to send down there officers to have the Brown inspectors admitted; he says there had been an injunction served on me from Judge Toney. I sent Lieutenant O'Brien; my orders were to put these inspectors in, and if they refused to let them in, to take the officers out and lock up the booth.

Q. Was that before or after the polls closed?

A. I could not say exactly whether before or after; but along about 4 o'clock in the evening.

Q. Before the lieutenant got there, had the polls closed?

A. I think it did; I think my memory is he reported that the polls had closed, and they had let the inspectors in.

Q. No voters kept from voting that you know of by that injunction?

A. No, sir; I was not around the precinct that day; I was at the station house receiving orders and directing the men; getting orders from the chief of police.

Q. Do you know whether at any of the precincts at your district the Republican inspectors were refused admission into any of the voting places?

A. I never heard of one; was not complained of to me.

Q. Do you know that district well enough to know, whether at any precinct in that district, there were more than two Democratic officers of election?

A. I could not tell you what the politics was of any officer at any precinct.

Q. What are the wards that constitute your district?

A. In my district it is part of the eleventh and part of the twelfth wards.

Q. What polling places—what are the numbers of the precincts?

A. I will have to go down in my pocket for that. I have a list with me in my pocket.

Q. Just give the numbers; what are the numbers in the eleventh ward of your district?

A. There is 36, 37, 38, 39, 40, 41, 42, No. 1 (in the same ward), 2, 3, 4, 5, 6, 7, 8, 9, all of the eleventh ward in my district. Here is the twelfth ward: 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 37, 38. That is all.

Q. I will ask you whether you do not know that in the 20th, 22d and 23d precincts neither Brown nor Republican inspectors were admitted into the voting places?

A. I don't know whether they were or not.

Q. Did you send any message over the telephone to any of your officers after you heard that Judge Toney had issued an injunction?

A. I got a message over the telephone from the chief of police giving the number of precincts to which to send officers to, in which to put in the inspectors; I sent officers to every precinct that were reported to me at the station house.

Q. Had there been any order given by you, or through you, to any policeman concerning inspectors of election?

A. No, sir; the police was instructed to go to the precincts as peace officers to preserve the peace; and not to interfere with the election one way or the other; not to act as judge of who had a right in or did not; that was left to the judges of the election; the officers decided and not the policemen.

Q. I will ask you whether you did not communicate to the police that they were to assist the election officers in preventing inspectors entering the booths?

A. No, sir.

Q. I will ask you whether you did not, after you heard of the injunction from Judge Toney telephone to some of your officers not to carry out the program agreed upon, because Judge Toney had issued an injunction, and they would get themselves into trouble?

A. The program;—I don't understand the question; what program, Colonel?

Q. I don't know; that is the reason I was asking you.

A. There was no program that we had that was agreed upon.

Q. I will ask you whether you did not hear that Judge Toney had issued an injunction, not from Chief Haager, but from another person, before you got any official notification of it?

A. If I heard it, or knew anything of it, it was through the newspapers before I got it from anybody when Colonel Haager over the telephone—.

Q. I will ask you Captain, before you received any official notification from the chief of police; before you received any order from the chief of police, if you did not receive notice that Judge Toney had issued an injunction concerning inspectors?

A. No, sir.

Q. I will ask you whether, before sending any order to the police in obedience to the order of the chief of police if you did not notify the policemen in certain precincts in your district, that they would get themselves into trouble, as Judge Toney had issued an injunction, if they undertook to carry out the program agreed on?

A. No, sir; I did not. I don't know anything about any program having been agreed on.

Q. Did you send any telephone message to any one of your police officers concerning inspectors before you sent any police officer with the order from Chief Haager?

A. I did not.

Q. Neither by telephone or by private message?

A. No, sir.

Q. When did you receive any information that there had been an injunction issued by Judge Toney, before you finally received the notice from Chief Haager over the telephone?

A. I got it from Chief Haager over the telephone first.

Q. First?

A. I would not have obeyed any order that day only from Chief Haager; that was his order.

Stephen Wickham, called as a witness for contestant, being duly sworn, and examined by Col. Young, deposed as follows:

Q. Where do you reside?

A. In the city of Louisville.

Q. What is your business?

A. Lieutenant of police.

Q. How long have you been lieutenant of police?

A. About three years.

Q. How long have you been on the force before that time?

A. I have been connected with the police force 12 years.

Q. Were you a Lieutenant on the 7th of November, 1899?

A. I was.

Q. In what part of the city was your jurisdiction?

A. I was in the 7th ward, the southern part.

Q. How many men under your command, if any?

A. I was stationed at the precinct on that day.

Q. What precinct on that day?

A. I can't give the number of it.

Q. Where is it located?

A. On 8th street between Kentucky and Zane.

Q. Do you know anything about an order that was issued by the board of public safety in regard to the conduct of the police that day?

A. Yes, sir, I read it at roll call that morning.

Q. How many times had that been read to the men?

A. Some seven or eight times.

Q. In the execution of the order, did you, and those under you, act in good faith?

A. Yes, sir.

Q. Did you endeavor to carry out these instructions to the letter?

A. Yes, sir.

Q. Did you do it?

A. We did, sir.

Q. Do you know of any arrangement, or any scheme, or any conspiracy, by which, while this order would be kept in the letter it would be broken in spirit?

A. No, sir; we carried these orders out to the letter.

Q. Who did you get your orders from that day?

A. From the chief of police; he had issued them some four or five days prior to the election.

Q. Do you mix with the people in the discharge of your duty?

A. I do; I am in the central part of the city; from Sixth street to Preston and from the river to Broadway.

Q. Did you hear anything about the gatling or the militia being called out and ammunition being brought into the city of Louisville for some days prior to the election?

A. I did, sir.

Q. Do you know whether that fact was generally known among the people of the city of Louisville?

A. Evidently it was.

Q. Seventh is in your district?

A. No, sir; the armory is not in my district.

Q. Did you have any occasion to go there one, two or three days before the election; to pass the new armory on Seventh street?

A. I passed there going to roll call.

Q. Did you see anything going on in the armory?

A. Yes, sir; I saw the soldiers in there.

Q. On the day of the election and prior to the election, in the conduct of your office as a lieutenant of police, coming in contact with the people of Louisville, I will get you to state to these committees whether or not the reports circulated in regard to the calling out of the militia, the injunction, ammunition, cannons; such a condition of things in Louisville as there would probably be disturbance in Louisville, had any effect upon the people, so as to prevent people from voting?

A. I think I would think so because the press had accused the police of being everything except gentlemen; accused us of breaking up the election; controlling the primary and the convention; and that we would endeavor to break up the general election; and the citizens of Louisville knowing that Governor Bradley was a Republican and had control of the militia were afraid that the militia and the police would come together.

Q. What effect did that have upon the minds of the people in going to the polls, so far as you know and believe?

A. The vote was smaller than usual; the full vote was not polled by some nine or ten thousand votes, if I remember correctly.

Q. Did you hear, in the conduct of your office, it talked about, in regard to the interference of the United States court; that officers from the United States court, would interfere?

A. No, sir; there was no interference where I was stationed.

Q. Was that reported around through the city immediately before the day of the election?

A. I can't say that it was.

Q. Did you hear anything about United States marshals?

A. I can't say that I did; only I remember distinctly that one of our officers was locked up the day of the election.

Q. You mean one of your police officers?

A. Yes, sir.

Q. How many men did you have under your immediate charge?

A. I was out of my district that day; I was in the neighborhood of where I live. I have eight men under my charge.

Q. Was there any disturbance in the city of Louisville where you were stationed on that day?

A. No, sir.

Q. Was there any such disorderly conduct there on the part of anybody as to require the presence of soldiers?

A. No, sir; I didn't see any need for them, I don't remember seeing any soldiers on the day of the election except I saw Colonel Mengel and others going to the polls.

Q. As a lieutenant of police, in that portion of the city were the forces you had sufficient to preserve order?

A. Yes, sir.

Q. Could have preserved quiet and order?

A. Oh, yes, sir, we had no trouble.

Q. Did you need any soldiers?

A. None whatever.

Q. Now I will ask you whether there was any such condition for four or five days immediately preceding the 7th of November, as would require the presence of the militia to keep good order?

A. I do not think there was any need of them. On the day of the election it was very quiet. I don't think I have ever seen a more quiet election; it was one of the quietest elections I have ever seen.

Cross-examined by Colonel Breckinridge:

Q. In your precinct where you were, was there any necessity that day for extra police?

A. No, sir; there was none, because it was very quiet.

Q. No necessity out there for extra police, and no necessity for the militia?

A. No reason; it was all one way out there; they were all L. & N. people—had no trouble.

Q. And they were all perfectly quiet?

A. Very quiet indeed.

Q. You needed no extra police or militia?

A. As I said before, there was no use for them out there.

Q. You were not on your regular beat?

A. No, sir; I was out where I live at.

Q. You say, in answer to Colonel Young, that the papers in Louisville had charged the police force with a great many things?

A. Yes, sir; if I remember right, they accused us of everything, except being gentlemen.

Q. They drew the line there, did they?

A. Well, they haven't proved it yet.

Q. They haven't proved that yet?

A. That we were thugs and everything else—called us everything.

Q. And among the charges that they made were as to your official conduct, was it not, concerning the mode in which the police discharged their duties on certain days in Louisville?

A. Well, they just took it on themselves—they just accused us whether we were guilty, or not.

Q. I am not meaning to show you were guilty, but I mean the charges to which you have referred, which Col. Young has brought out in your examination, were charges which concerned the mode in which the police behaved at the primary election in June, and on other days, in Louisville?

A. Now, Colonel, I think the only mistake we made, we were for the wrong party.

Q. I ask you whether those were the charges—were those the charges?

A. Yes, sir; I suppose that is what it was, Colonel.

Q. You know you have spoken of the charges; those were the charges, were they not?

A. That is what they accused us of—.

Q. And those accusations, you say, had created a good deal of feeling and excitement, did you?

A. I judge so—yes, sir.

Q. And the presence of the militia created some fear that there might be a conflict between the police and the militia?

A. Well, as I stated before, Colonel, beg your pardon for interrupting you, they stated that we had broken up the primary and the convention, and we were endeavoring to break up the general election.

Q. You mean that those charges against you?

A. Yes, sir; and they thought by calling out the militia that it would keep us from breaking it up; I judge that was their idea about it—I don't know.

Q. And that created some feeling that there might be a collision between the militia and the police?

A. Yes, sir.

Q. Was that feeling increased by the fact that the mayor called out from 240 to 270 extra police?

A. I can't say that it was, Colonel.

Q. Can you say that it was not?

A. I don't know what the mayor's idea was; I never consulted him on that at all.

Q. I am not asking you, Lieutenant—you misunderstand; I asked you whether the people felt that that increased the danger of a conflict—the fact that there were militia in the armory, and extra police called out, did they feel that that increased the danger of a collision, or not?

A. If I remember correctly, I think they had a meeting over at the Board of Trade, and the chief of police, mayor and others promised them they would preserve order that day. I judge that is the reason he called out the extra police.

Q. No, I asked you whether the calling out of that extra police, in your judgment, increased the excitement in the city, or allayed it?

A. Well, Colonel, I can not say that it did.

Q. You don't think it did?

A. I didn't say that it did, sir.

Q. You don't think it had any effect, one way or the other.

A. Well, I don't know about that.

Q. What is your best judgment, Lieutenant?

A. What was the question again, please?

Q. The question I asked you was, whether, in your judgment, the calling out of the extra police, or the swearing in of the extra police, increased or allayed the excitement in the city of Louisville?

A. Well, the day of the election there was no excitement whatever; by calling out the Legion that didn't disperse any crowd that I am aware of, and what they were hunting for, of course I am unable to say.

Q. You don't know therefore that the calling out of the extra police had any effect upon the public mind at all?

A. I don't know that it had.

Q. Were you cognizant of the fact that some 79 Republican officers of the election were discharged the night before the election, and 79 Marshall election officers were substituted in their place?

A. Only what I read in the papers.

Q. You read that in the paper?

A. Personally I know nothing of it.

Q. In your judgment, did that increase the excitement of the people at all?

A. I don't know that it did.

Q. Did it increase, in your judgment, the distrust of the people in the promises of the administration, to see that there was an honest election, and fair treatment on that day?

A. Well, Colonel, all the orders that we had was just to preserve order and vote. We interfered in no way with the election.

Q. I am not asking that; the question I asked ,was whether you stated that you knew the state of feeling in Louisville, that you had been there a long time, and gave some opinion concerning that state of feeling. Now, the question I asked you was, whether the discharge of 79 Republican election officers in 79 selected precincts, and the substitution of 79 Marshall election officers in those precincts, done some twelve or thirteen hours before the election was to happen, increased or decreased the mistrust and suspicion of the people of Louisville in the promises of the authorities to keep the peace and to have a fair and honest election?

A. Well, Colonel, if that is true, discharging 79, I would judge that the Republicans felt sore about it.

Q. You would think the Republicans would feel sore about it?

A. If that is true—yes, sir.

Q. And you would think that the Democrats would not feel sore from that?

A. Well, I don't think that, Colonel.

Q. Well, I say you would think so?

A. I don't think that it would make the Democrats sore to have that.

Q. If the Democratic commission discharged 79 Republicans and put 79 Marshall men in their place twelve hours before the election?

A. I am not aware, Colonel, that there was 79 Marshall men put in there.

Q. I am not asking you whether you know it, or not; but I asked you if that had happened, would it have had that effect?

A. If that had happened it would have been different, of course. I don't know anything about what the commissioners did.

Edward T. Bright, being duly sworn and examined by Colonel Young, deposed as follows:

Q. Where do you reside?

A. Number 2529 West Broadway, Louisville.

Q. What position do you hold on the police force of Louisville?

A. Captain of police.

Q. How long have you been such captain?

A. I have been a member of the police force about seventeen years; I have been a captain, I would judge, about ten or twelve years.

Q. What position did you hold on the 7th of November, 1899?

A. Captain of police.

Q. Were present in Louisville on that day?

A. Yes, sir.

Q. Do you know anything about an order issued by the chief of police for the direction of the conduct of the policemen of Louisville on election day?

A. Yes, sir; I have a copy of the order in my pocket now.

Q. Was that order, or not, read to all of the officers of the police force?

A. Yes, sir; I also had an order attached to that, instructing us to read it so many times to the members of the police department.

Q. Did you obey the instructions in regard to reading it?

A. I saw that it was done—yes, sir.

Q. Now, I will get you to tell these committees, whether or not, as a captain of the police force in the city of Louisville, in good faith, you carried out the instructions contained in that order?

A. I did, sir.

Q. Was there an understanding, secret or otherwise, by which you were not to carry out those instructions in good faith?

A. None whatever, sir.

Q. Now, I will get you to state whether or not you knew, and whether you knew that the public knew, that rumors had been circulated in regard to the calling out of the militia in the city of Louisville, and the introduction of cannon and ammunition into the new armory in the city of Louisville on Main street?

A. Yes, sir; it was rumored about the city.

Q. Well, did many people know it, or few people?

A. Oh, well, I guess everybody knew it, Colonel.

Q. Now, in your judgment, what was the effect, which the calling out of the militia had, or the threat of the calling out of the militia had, upon the public mind, in regard to going to the polls on that day?

A. Well, I believe it had the effect of decreasing the vote of the city of Louisville on that day.

Q. Where were you stationed on that day?

A. Well, my headquarters was the city hall.

Q. Were you there that day?

A. I was there the biggest part of the day; I was out in different parts of the town during the day.

Q. I will get you to state whether or not there was in the city of Louisville, either for three days preceding the election, or on the day of election, any such disorder, or riot, or misconduct, as required the presence of the militia to keep the peace?

A. No, sir; I don't think there was.

Q. Were the forces under control of the chief of police, and the men which composed the police force, able to keep and preserve order that day?

A. I think we could have handled it—yes, sir. I don't think there was any doubt about it.

Cross-examined by Colonel Breckinridge:

Q. A perfectly quiet election, wasn't it, Captain?

A. Yes, sir; it was a quiet election—what I would call a quiet election. I have seen more fuss in one ward in the city of Louisville than we had all over town that day.

Q. You think that there was no need for military or special police?

A. I would not think so.

Q. The swearing in of the extra police, and the military was wholly unnecessary, so far as anything occurred on that day?

A. Yes, sir.

Q. How far the swearing in of the police, and the military being there, caused that quietude, you would not state, would you, Captain?

A. Well, no, I could not say that—certainly not.

Q. Could you say whether, if the extra police had not been sworn in, and the military had not been there, the election would have been as quiet as it turned out to be?

A. I am under the impression that the swearing in of the extra police cut no figure at all, because they were sworn in the night before the election, or the morning of the election, and there were very few people knew there were extra police.

Q. Wasn't it published in the afternoon papers that they would be sworn in?

A. That they were going to swear them in; but they didn't go on the street, except to give them permission to go to vote.

Q. Was the military on the street?

A. Some soldiers on the street—yes, sir.

Q. Did you see them?

A. Yes, sir.

Q. Where?

A. Different parts of the town; I could not tell the place.

Q. Please state to the committee, just as accurately as you can, where you saw them?

A. I could not do that, because I don't remember.

Q. Armed, or unarmed?

A. I could not say that, sir.

Q. Did they have guns, or no guns?

A. I could not state that.

Q. Why can't you, Captain?

A. I never paid much attention to that. I would not want to state they had arms if they didn't have, and I don't remember.

Q. You were on duty that day as captain of police?

A. Yes, sir.

Q. You know a musket when you see it?

A. Very well, sir—yes sir.

Q. And you say you can't recollect whether you saw armed soldiers on the streets that day or not?

A. I don't remember, Colonel, whether they were armed, or not.

Q. Were they in marching order, under command of anybody, or were they just alone, singly or in groups?

A. I don't remember seeing any in marching order.

Q. And how many did you see in the biggest covey that you saw?

A. Oh, I saw soldiers around different parts of Louisville that day.

Q. Around any of the polls?

A. I believe I saw some at the polls.

Q. At what polls did you se them, Captain?

A. I could not state that, Colonel; I don't remember, exactly.

Q. Are you confident you saw them at the polls?

A. Oh, I believe I did—yes, sir; seen some at different polls. They might have went there to vote; I don't say what they went there for.

Q. Did you recognize any of them?

A. No; I don't know very many of those new soldiers that have been sworn in.

Q. They are all citizens of Louisville?

A. I would judge so—yes, sir.

Q. Did you serve or help to serve any of the injunctions that were served that day?

A. I went, with the assistance of several other officers, and Mr. Robert Kinkead, for to serve one of them, and when we got to the place to serve it on the people that we were to serve it on, they told us that everything had been settled satisfactory, and I went and reported back to the City Hall with the injunction or paper.

Q. That was the only one that you undertook to serve?

A. Yes, sir.

Q. The only one you knew about?

A. Yes, sir.

Q. What time of day did you see the soldiers?

A. I could not tell you exactly, Colonel. I went on watch that morning at six o'clock—I was up that morning at five o'clock, left my home at Twenty-sixth and Broadway—you might say I was on watch from five o'clock that morning until eleven that night.

Q. In what ward did you see these soldiers?

A. Well, if I seen them at all, I seen them in the central part of the town.

Q. Are you at all certain that you saw any that day at all?

A. I saw soldiers that day—yes, sir; men dressed as soldiers—I guess they were soldiers.

Q. You saw men in uniform?

A. Yes, sir.

Q. And you can't recollect whether they had their guns with them or not?

A. No, I can not.

Re-direct examination by Colonel Young:

Q. Captain Bright, all these special policemen, as I understood

you to say, were kept in the station houses, and were not allowed to go on the streets during the entire day?

A. We allowed them to go and vote, Colonel, and allowed them to get something to eat.

Q. That is all?

A. Yes, sir.

Q. They didn't go out as a police force, or in uniform at all?

A. No; they were not in uniform; I don't know the exact number that was sworn in, but I think there was fifty or sixty of them at the Central Station; they stayed down in the alley at the patrol wagon stable.

Q. They didn't go out on the streets in a body, in any way whatever?

A. No, sir; we warned them not to go out on the streets—not to bother anybody at all.

Q. Those soldiers that you saw—they had on blue coats, didn't they?

A. Yes, sir.

Re-cross-examined by Colonel Breckinridge:

Q. They had the American uniform on, not the Spanish?

A. Oh yes, sir; that is the only soldier I recognize—the American.

Patrick J. Ridge, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. What is your name, Lieutenant?

A. My name is Patrick J. Ridge.

Q. How long have lived in the city of Louisville?

A. About thirty-five years.

Q. How long have you been a member of the police force?

A. Seventeen years.

Q. How long have you been an officer on the force?

A. I have been a lieutenant nine years, and a sergeant three years before I was made a lieutenant.

Q. Were you a lieutenant and a member of the police force of Louisville in November last?

A. I was.

Q. Were you in the city, and on duty, on election day?

A. Yes, sir.

Q. Captain, I will ask you what, if anything, you, as an officer, did, prior to the election, and on election day, in the direction of using the police force for election purposes?

A. Well, I have got charge of eighteen men there—a platoon of men; we had strict instructions, as the other officers testified about that order that was given to the men. That order was to be read on Thursday, Saturday and Tuesday morning of the election, and each time it had to be read in succession, which made it about nine times, I believe. The order was very strict; it even went on to say that they should neither take part in the election,

either by word or action, and those men knew very well that if they did take part, they would be handled for it, and were so instructed by I and the captain—Captain Burke has charge of the district.

Q. I will ask you whether you and your captain gave those orders in a positive way, or whether it was done with any secret understanding that they were not to be obeyed?

A. No, sir; they were given in good faith.

Q. I will ask you whether they were obeyed and carried out, or not?

A. They were, in our district—yes, sir.

Q. How did the police carry out the orders on election day, if you know?

A. Well, the orders they had, governing the election, was to stay fifty feet away from the polls, and not to interfere, in any way, with either party, only as peace officers.

Q. Well, how did they execute the orders; did they carry them out, or not?

A. They executed them to the letter—no complaint from anybody that I know of.

Q. Lieutenant, you live in the eastern part of the city — you and I live in the same neighborhood, I believe?

A. Yes, sir.

Q. Are you acquainted with the people of the city of Louisville, generally?

A. Yes, sir.

Q. Have you many or few acquaintances amongst the people?

A. Well, a great many of them, in my rounds — when I make my rounds for the district.

Q. Do you know any of what my friend, Mr. McDonald, calls the plain people—the common people?

A. Yes, sir; we are all plain people up in that neighborhood.

Q. Now, Lieutenant, I will ask you whether you know whether the people of Louisville, and especially those that you are acquainted with, knew of the arrangements that had been made to have a temporary armory, to bring a large amount of ammunition, guns, bayonets, Gatling guns and the like to the city of Louisville, just before the election?

A. I don't know of my personal knowledge only that it was common talk amongst the people on account of the press; the press had it in.

Q. What effect, if any, did these arrangements and pre-announcements of the bringing of the militia to this place on election day have upon the people?

A. Well, the people was in fear and dread at the time, that we were going to have trouble. The Dispatch, in particular, you knew, had an editorial in there, right and left, if the police interfered in the election, why, to shoot them down. I remember that

one editorial in there, and it looked kinder bad before the election, but on election day, I didn't see anything going on.

Q. Were there any state of facts existing in Louisville, or had anything been done or said, that you know of, to make it necessary to call out the militia?

A. Nothing, only the way the press was going on, at all.

Q. Was there, in truth, or in fact, any foundation for any of the statements made about the police?

A. No, sir.

Q. Had the police any purpose, secret or otherwise, or any intention of a secret nature, or otherwise, of evading the law or interfering in any way, with the rights of any voter, or any party?

A. No, sir.

Q. I will ask you, Captain, whether you heard any talk amongst the people about the action of Judge Evans, and the Federal authority?

A. Oh yes, it was common talk amongst the people; everyone presumed, that is, when you would get to talking politics, about Evans taking a hand in the election.

Q. What effect did that have on the Democrats?

A. I judge it scared the Democrats up a little; they are all the time afraid of the Federal court.

Q. Did the people whom you heard talk about it know the politics of the Governor that was down in charge of the militia, and of the colonel who was to act under the Governor, in directing them in election day?

A. I think they did.

Q. Did they know the politics of the Federal judge, who gave the charge that has been spoken of here?

A. Oh, yes; I guess most everybody in Louisville knows his politics.

Q. I will ask you whether these things that you have spoken of have any special effect on people of any particular party?

A. Well, in my opinion, they had on the Democratic party; they were naturally afraid of the militia and the Federal courts.

Q. Why on the Democrats more than the Republicans?

A. Because the supposition was the militia was called out by the Republican party, and would aid them if there was any trouble.

Cross-examined by Colonel Breckinridge:

Q. Lieutenant, did you say to the committee that just before the election it looked as if there might be trouble the way the papers read?

A. Yes, sir; I think I stated that—the way the papers read.

Q. You thought there might be—there was some excitement and there might be some trouble; but on election day there was no trouble, and it was a quiet election?

A. I saw none on the day of election; I was in the station house

until 2 o'clock; that is, I went to dinner at one, and came back at two.

Q. How was it that all that excitement that you say existed, and made it look pretty bad, passed away, and the election was such a quiet and such an orderly election—caused by what?

A. I don't think there was any cause for the press making the assertions they did; that is the reason.

Q. So that in point of fact there was no excitement?

A. None at all, I could not see any. While the people would talk about it, I could not see any.

Q. Then you don't mean for the commission to understand that it looked badly, or any excitement at all?

A. No, I didn't mean that; I mean, they got the people to talking to that effect, but I could not see anything in it, except the press.

Q. But the people were talking about being danger of a collision election day; were they, or were they not?

A. Yes, sir; a great many of them were afraid to go to the polls on election day.

Q. So whatever might be your feeling, being a courageous man of the police force for a long time—whatever might be your feeling, the common people thought there was danger?

A. Yes, the general talk.

Q. There was danger of a collision, and danger of a riot?

A. That is the way the paper put it. It kinder worked the people up to a pitch, but I could not see nothing in all that paper talk.

Q. But the other people, that my Brother Phelps says Brother McDonald called the plain people, not the policemen—had gotten them worked up to some feeling of danger, and they talked about it?

A. They talked about what the press had stated, and that was all.

Q. Then there wasn't any excitement at all?

A. None at all; I could not see none at all.

Q. And in point of fact there was no danger the day before election of any collision at all?

A. Not a bit, sir.

Q. No necessity for militia, and no necessity for extra police, and no necessity for any extra precautions?

A. I didn't see any.

Q. So far as you were concerned, everything was as pleasant as a May morning, and as peaceful as a Sunday school?

A. It was in my district; I don't know anything about the other part of the city.

Q. Do you think the reason it was so peaceful up in your district, you and my Brother Phelps live up there?

A. That might have helped it along—yes, sir.

Q. Where were you on election day?

A. I was in the first district station, on Clay street between Jefferson and Green.

Q. Did you hear any complaint in your part of the town at all about anybody being intimidated or scared or hurt, in any way?

A. No, sir; I was in the station house all day, I told you.

Q. Did you hear anybody, hear of anybody, or see anybody, that was kept from the polls by being intimidated?

A. Not in particular.

Q. Did you hear of anybody that voted in one way, that would have voted in the other way, if it hadn't been for the militia, or for Judge Toney?

A. I did not.

Q. Was there anything on that election day that you could see, that made you believe the people were alarmed, and didn't vote?

A. I wasn't out at all that day, understand, until two o'clock; that is when I first went on the street.

Q. And there were no arrests made?

A. I don't think there was over one or two at our station house.

Q. And were they fellows that had been a little overcome by whisky?

A. I think so; I don't think there was any serious charge.

Q. Just disorderly conduct?

A. Yes, sir; I don't think it was any serious thing at all, the charge; I don't recollect.

Re-direct examination by Mr. Phelps:

Q. You have been asked a good deal about what the papers said, and the excitement that was worked up; I will ask you if it wasn't perfectly apparent to anybody that would look the matter over, that these efforts to stir up something in the paper were the part of a plan that was gotten up to make the excuse for the calling out of the militia?

Objected to, sustained and excepted.

T. A. Roberts, being duly sworn and examined by Colonel Young, deposed as follows:

Q. What is your full name?

A. Thomas A. Roberts.

Q. Where do you live?

A. Louisville, Jefferson County, Kentucky.

Q. How long have you lived there?

A. I have made Louisville my home since December, 1887.

Q Have you continuously resided there ever since?

A. I have called that home. I have traveled out of there, and been away quite a good deal of the time. Since 1896, I have lived there continuously.

Q. What is your business, Mr. Roberts?

A. I am a special agent for the Union Central Life Insurance Company.

Q. How long have you held relations to that company, which you now hold?

A. Three years this coming June.

Q. What part of the city of Louisville do you reside in?

A. I live in the tenth ward—what is known as the tenth ward; Thirteenth and Chestnut.

Q. Were you a candidate for office at the recent election; if so, what?

A. I was, Legislature.

Q. Who was your opponent?

A. I had two; George D. R. Aikin was the Republican candidate, and Sylvester McDonough was what was known as the Honest Election League candidate—Honest Election candidate.

Q. How many votes are there in the tenth ward?

A. I think the total registration is about 3,400.

Q. How many votes were cast?

A. About 2,200; I haven't the exact figures in my mind.

Q. Did you examine, or know the relative proportion of people who were registered as Republicans—what proportion of those voted?

Objected to.

Q Do you know, Mr. Roberts?

A. Exactly, I do not.

Q. Well, substantially?

A. The Republicans cast their full strength. In my recollection, this is the second time that ward has gone Republican since I have been in the city.

Q. Now, did you prosecute a reasonable, active canvass for the Legislature in that district?

A. I did.

Q. Did you have an opportunity while prosecuting this canvass, to come in contact with the people throughout the tenth ward?

A. Yes, sir.

Q. I believe that comprises the Fiftieth Legislative District?

A. Fiftieth District—yes, sir.

Q. Now, Mr. Roberts, will you kindly tell these committees, if you know whether there were any rumors or statements made circulated in the newspapers among the people in regard to the calling out of the militia on the 7th of November.

A. There were very inflammatory articles in the Louisville Dispatch and Louisville Evening Post several days prior to the election.

Q. Well, what were they talking about in regard to the militia?

A. Talking about Federal interference, and the use of the militia, and so forth.

Q. Did you hear anything, or do you know whether the peo-

ple heard anything about preparations for the militia being called out, and the introduction of cannons and guns and ammunition into the city of Louisville?

A. That was current on the street—common conversation.

Q. Do you know where the new armory, or the armory that those blue-coated gentlemen occupied on the day of election, was situated in the city of Louisville?

A. It is on Main street, between Sixth and Seventh, on the north side.

Q. Is that a populous part of the city of Louisville, a place where many people pass or where few people live?

A. It is the wholesale district, the busiest part of the city.

Q. Have you had occasion to look at the building since?

A. I have; yes, sir.

Q. Did you see any sign on the armory?

A. Saw a rent sign on it last week.

Q. It is not now used as an armory?

A. I think not.

Q. Now, Mr. Roberts tell the committee, if you know, in your judgment, what effect these inflammatory, incendiary articles about riot, trouble and quarrels on election day, and the calling out of the militia had upon the voters of the city of Louisville in regard to their attendance at the polls on that day?

A. I should think that it had a very bad effect upon the people. However, I could not state any man that stayed away from the polls on that account; I could not give any name, but it seems to me it caused a good deal of falling off in the votes; I am satisfied it did, from the fact that the vote was not polled, the usual vote.

Q. Your district, I suppose, know the politics of Governor Bradley?

A. Pretty generally understood, the Governor's politics.

Q. Your district is an intelligent district, isn't it?

A. A good many Republicans live down there, and I think they understand it.

Q. Mr. Mengel has got a big lumber establishment [illegible] at district, hasn't he?

A. Eleventh and Kentucky; yes, sir.

Q. They knew Mr. Mengel's politics, didn't they?

A. Quite well.

Q. They knew he was in command of the Legion?

A. Generally understood.

Q. Now, Mr. Roberts, were you present at any voting place that day when Judge Toney's injunction order, his celebrated mandatory injunction, was served?

A. I was voting in my precinct when that order was served on the election officers.

Q. I will get you to state whether or not you are able to give

the committee here the exact time that that order was served, and your reasons for knowing the time?

A. It was exactly, by my time, three minutes after three.

Q. How do you know it was?

A. I looked at my watch.

Q. Did this mandatory injunction produce any effect upon your mind, to cause you to note the time at which it was served?

A. Well, it seemed to intimidate the officers there; they were somewhat confused, didn't hardly know what to do; a gentleman came in and pitched the papers down and said to the officers, "You are all under a thousand dollar bond," for some purpose or other—to be plain with you, I was somewhat excited myself when they rushed in there with those papers, not knowing what it meant.

Q. Well, did you read it then?

A. I did not, at that time; I read a copy of it afterwards.

Q. It intimidated those officers then, you said?

Objected to.

Q. Colonel Breckinridge seems to think you did not say that; did you, or did you not, say it?

A. I think I did.

Q. It is true, isn't it?

A. Yes, sir.

Q. Now, I will get you to state what effect this order, and served in the way in which you have told the committee, had upon the Democratic organization at the place where you were; whether it remained intact, or what became of it?

A. Well, it had this effect, whether there was any crookedness done there or not, I am not able to say, but the Democratic officers, or at least one of them, told me—

Objected to.

Q. Is he living or dead?

A. He was living to-day, Colonel.

Objected to.

Q. Well, now, what effect did you say it produced on the people there, the officers of election?

A. Nothing more than general confusion; the people were all excited, even the people around the polls, as to what the result would be.

Q. Do you know who the man was that came down and flung these papers on the table and said they were all under a thousand dollar bond?

A. I heard his name was Weber.

Q. Have you ever had occasion to examine who this man was that moved in and out with a thousand dollar bond?

A. I never took time to investigate it; I heard his name was Weber—on the street when I went out.

Q. Now, Mr. Roberts, in your business you go, I suppose, through

a large part of the business portion of the city of Louisville, do you?

A. Yes, sir.

Q. I will get you to state to these committees, whether or not as a candidate for office, and as a business man, and knowing the condition of the public mind, and the sentiment of the public mind; whether there was any necessity for calling out the militia to keep the peace?

A. I think not.

Q. I will get you to state whether or not, from your knowledge of the police force, its members and its officers, it was able on the day of election to preserve order and keep the peace in the city of Louisville?

A. I think so.

Q. Now, a few moments ago we said something about the charge—did you hear anything about the charge that Judge Evans made to the grand jury of the United States Court?

A. Yes, sir.

Q. Was that commonly talked about in the city of Louisville?

A. People generally talked about it; it was printed in the newspapers.

Q. Well, did that have any effect upon the public mind?

A. The people thought that the Federal marshals would take charge of the election.

Q. What effect did that have on the people as to going to the polls, or staying away from the polls?

A. In my opinion, it would have a tendency to keep them away.

Q. Now, combining these three things of which we have spoken, Judge Evans' charge to the grand jury, and what he was going to do as a Federal judge; and the calling out of the militia; and Judge Toney's unlawful order—what effect, generally, did they have upon the public mind, and public sentiment, generally, in the city of Louisville, on election day, as to going to the polls?

A. The general impression of the people, my opinion is, that they thought there would be riot and bloodshed on that day and trouble, and thereby kept a great many from going to the polls and exercising the right of suffrage.

Cross-examined by Colonel Breckinridge:

Q. How much effect do you think the serving of Judge Toney's order at three o'clock, in keeping the voters in your precinct from going to the precinct between three and four o'clock?

A. I don't think that Judge Toney's order kept a great many people from the polls, Colonel.

Q. So that you don't put that in as one of the things that kept people from the polls?

A. What I mean by that is, that that confused the election officers and the Brown inspectors, and the Republican inspectors combined and took charge of the count.

Q. That is what you mean, that the Democratic party became disorganized?

A. Beyond question.

Q. Disorganized when it was found in your precinct there was going to be inspectors to see whether the count was honest or not?

A. No, I didn't say that.

Q. You don't mean that?

A. I don't mean that.

Q. You don't mean that there was anything done by the Democratic party, or any plan on foot, that when they found that there was to be Brown inspectors, and Republican inspectors, it disorganized the party by breaking up their plan?

A. I don't mean that there was any conspiracy, or any pre-arranged affair to do anything more than to count the ballots honestly.

Q. How then did it confuse them if they were going to be honest, and intended to be honest in having somebody watch them in being honest?

A. From the general newspaper articles that were printed, and conversations on the street of military interference and Federal marshals' interference and so forth, the election officers presumed if they didn't stand back and give up the polls to those people, they would get in trouble.

Q. How many of those officers in there were Democratic and how many Republicans?

A. To be plain with you, I don't know.

Q. You don't know.

A. No, sir.

Q. You don't know whether there was any Republican officer, do you, in any of the precincts in your wards?

A. I presume there was.

Q. Do you know that fact?

A. But from personal knowledge, I do not.

Q. The precinct at which you voted, and which this mandatory injunction was served at three o'clock, is what precinct?

A. Thirty-first precinct of the Tenth Ward.

Q. That Tenth Ward is largely a colored ward, is it not?

A. A good many colored people live there—yes, sir.

Q. A pretty large proportion in that ward is colored?

A. I can't say, for I really don't know; I want to be truthful with you.

Q. Yes; what would be your judgment; you have stated to Colonel Young, have you not, that you are well acquainted with the city of Louisville, and pretty well acquainted with the fe ing ther ; that your duties called you about Louisville?

A. I didn't say that.

Q. In your ward where you were running for office, what was the proportion of the white to the colored votes?

A. What was the proportion of the colored votes?

Q. Yes; to the whites.

A. I think there's about nine hundred colored voters in the Tenth Ward.

Q. Out of about 3,400?

A. That is not personal knowledge; I presume that.

Q. Do you know whether a good many of those negroes registered in your ward as Democrats?

A. I do not.

Q. Do you know whether a good many of them registered as independents, without stating their party affiliations?

A. I do not; I never looked over the registration.

Q. In answer to a question by Colonel Young, which the committee allowed, about your knowledge how the registered vote came out on that day; can you tell how many persons registered as Democrats actually voted in that precinct?

A. I can not.

Q. Did you go over the stubs of the poll books and the registration list, to see how many of the voters that did vote, had registered as Democrats and how many registered as Republicans?

A. Did I, personally?

Q. Yes.

A. No, sir.

Q. You haven't had that examined?

A. Not personally; no, sir.

Q. So that when you say the Republicans voted out their strength, all you mean is that the number of votes received by the Republicans was nearly equivalent to the number that registered as Republicans?

A. No; I don't mean that, Colonel. I mean from future—I mean, past experience in elections there, past elections in the city of Louisville.

Q. You mean that the vote of the Republicans in that precinct this time was about what it had been heretofore?

A. Yes, sir; fully, or more.

Q. And that the vote of the Democrats, of the regular Democratic ticket, the Goebel Democratic ticket, was not as large as the Democratic vote heretofore had been?

A. No, sir.

Q. Do you know anything about what disaffection, if any, there was in that ward, of persons who have heretofore voted the Democratic ticket, with the recent Democratic ticket?

A. There was some disaffection; yes, sir.

Q. There was some considerable, was there, in that ward?

A. Two hundred Brown votes cast in that ward.

Q. Two hundred Brown votes?

A. Yes, sir.

Q. Have you knowledge of persons who have heretofore been

Democrats, who were against Goebel, in addition to the two hundred Brown votes, that either voted for Taylor, or openly against Mr. Goebel?

A. I don't know, Colonel.

Q. Do you know how many Democrats in that ward stayed at home because they were not willing to vote for the Goebel ticket, and yet didn't feel like voting against the Democratic ticket?

A. I do not.

Q. Don't know how many of that sort?

A. No, sir.

Q. Do you know of anybody in your ward, or in the city of Louisville, who was intimidated by the militia, so that he didn't go to the polls, who otherwise would have gone?

A. You mean, personally?

Q. Yes.

A. I do not; you asked me that before.

Q. Do you know anybody that got frightened at Judge Evans, and stayed away because of Judge Evans' charge?

A. Do I know anybody that got frightened?

Q. Yes; and stayed away because of Judge Evans' charge?

A. No; I don't know anybody that stayed away.

Q. You do know some persons that got frightened?

A. Yes, sir.

Q. Did they get frightened at Judge Evans' charge or get frightened because it was possible they might wake up and find they had violated the wrong law?

A. No; that wasn't it; that wasn't what I had reference to.

Q. Do you mean that it did suddenly dawn upon the minds of some of the persons that thought they could do some things with impunity, that perhaps they might get into trouble if they did it, and got frightened?

A. No; I don't mean that.

Q. Mr. Roberts, I believe you were a candidate?

A. I was.

Q. You did not receive a majority of the votes counted?

A. On the face of the returns; no, sir.

Q. What was the apparent majority that you did not receive?

A. What was that, Colonel?

Q. What was the apparent majority that you did not receive?

A. I think Aikin's plurality was five hundred and sixty-one.

Q. Five hundred and sixty-one?

A. Yes, sir.

Q. Out of two thousand two hundred votes cast?

A. Yes, sir; in round figures.

Q. And there was a Brown candidate?

A. Yes, sir.

Q. How many did he get?

A. Two hundred.

Q. So that, so far as the persons who had the courage to vote in your ward was concerned, there were five hundred and thirty-one more preferred your opponent to you, on the face of the returns?

A. Well, a company of military, you know, makes people feel courageous sometimes, and according to your statements, and according to that, your statement is correct.

Q. Did the company of military parade out in your part of the town that day?

A. I didn't see them, but I heard Leiutenant-Colonel Gray on the witness stand the other day say that they did.

Q. At what time?

A. After the polls closed.

Q. Did the fact that the military came to your polls some time after the polls closed, influence the number of fellows who had voted before four o'clock to vote for your opponent instead of you?

A. I don't think it influenced them in voting, but it may have influenced the count, Colonel.

Q. Had the count been concluded before they came?

A. No; I think not.

Q. I believe, Mr. Roberts, you are a contestant before the Legislature; are you not?

A. I am; yes, sir.

Q. For a seat, that the plurality shows was not for you?

A. Yes, sir.

Thereupon the board adjourned until Tuesday, January 23, 1900, to two o'clock, p. m.

Frankfort, Ky., January 23, 1900.

The board met pursuant to adjournment.

Clarence E. Walker, a witness, called for the contestee, being duly sworn, and examined by Mr. Breckinridge, testified as follows:

Q. What is your name?

A. Clarence E. Walker.

Q. Your residence?

A. Louisville, Ky.

Q. Your occupation?

A. I am official stenographic reporter of the Jefferson Circuit Court, Law and Equity Division, Judge Toney's court.

Q. Do you reside in Louisville?

A. I live at 515 Belgravia, in Louisville.

Q. Where is your office in Louisville?

A. No. 31, Louisville Trust Building, third floor.

Q. Are you personally acquainted with Judge Sterling B. Toney?

A. I have been official stenographer for about twenty years in the courts of Louisville, and have been the official stenographer of Judge Toney's court ever since the passage of the law authorizing the appointment of one stenographer, with the exception of about one month at the first of the term; about seven years altogether.

Q. Were you in Louisville upon election day?

A. I was.

Q. Were you in your office at that time on that day?

A. I was.

Q. Was Judge Toney in your office at that time; that day?

A. Yes, sir, Judge Toney was in my office several times during that day.

Q. Were Messrs. Aaron Kohn and Zack Phelps in your office at any time during that day when Judge Toney was present?

A. They were.

Q. Will you state and tell this committee what was the conversation, if any, and what occurred between those attorneys and Judge Toney?

A. That week was equity week of our court, during which we have no common law trials. I had an engagement with Judge Toney to take an opinion from him. I do most of his short-hand work, and he said he would be over there about 11 o'clock. I took no particular notice of the exact time, not knowing any importance would be attached to it. Judge Toney came over there and began his dictation of an opinion which was a matter entirely disconnected with this affair, being the case of one of those German-American Title Company cases, and while he was dictating, Mr. Kohn and Mr. Phelps came to the door, and opened the door and came in. They said to Judge Toney, "We want to see you about this injunction." Judge Toney said, "Well, what about it?" Now in what I say now I can not distinguish unless I so state as to whether it was Mr. Kohn or Mr. Phelps who did the talking.

Q. When you say Mr. Kohn, do you mean Mr. Aaron Kohn?

A. Yes, sir, I pronounce it "Kohn" all the time." They said, "We want to see you, Judge, about this injunction." Judge said, "Well, what about it?" One of them said, "We want to move to dissolve it." Judge said, "Very well, where is your notice?" The reply was, "We have no notice, and can't serve notice—we can't catch—get those parties." Mr. W. H. Smith, whose stenographic work I do mostly, had been in my office several times that morning, and Judge Toney said—on matters not connected with this case, whatever. Mr. Smith's presence was not—it was not connected with any politics; strictly legal business. They said, "We can't get these parties; we can't serve notice on them." Judge Toney says, "Why not serve notice on the lawyers?" And they said, "Oh, we can't catch those lawyers," and I spoke up then and said, "Well, Mr. Smith is down on the next floor, and I have seen him several times to-day; I will serve a notice for you on them, if you wish it," and I offered to write the notice there, and they didn't seem—didn't seem to desire to have the notice written, at least they didn't accept my offer to write it. Mr. Smith was down in his office, and Judge Toney had offered to allow service on Mr. Smith be sufficient service of notice on them, and he offered that they could serve the

notice on Mr. Smith and at 1 o'clock he would hear, see them at the court-room. At this time I glanced up, having offered to serve the notice, I glanced up, and I don't remember distinctly the time, but it was some little time before 12 o'clock. Mr. Kohn then said, I remember distinctly that this was Mr. Kohn. He said, "Judge Toney, I don't think you have any jurisdiction of that matter, and if I were an officer I would not obey it," and Judge Toney sort of smiled, and he said, "Well, Aaron, I would hate to have my friends up for contempt." They are warm friends, Judge Toney and Mr. Kohn. Then Mr. Kohn said, "Well, Judge, suppose these people do disregard this notice, what are you going to do?" and Judge Toney said to him, "Now, you know, Aaron, I can't tell you what my action as a court will be before-hand." "Oh, well," he said, "I would like to know." Judge Toney said—I may not be using the exact words, but it impressed me that this was the idea that was conveyed—that when he enjoined, he enjoined, and Mr. Phelps manifested a disposition to stay and argue the question, but Mr. Kohn I don't think —he was ready to go out in about two minutes. Mr. Kohn was— he didn't care about kicking against the pricks, I don't think. He said "Come on, Zack." Mr. Phelps still manifested a disposition to stay, and they then had a little talk, personal, very short talk. Well, I can tell that; it don't cut any figure, I don't think, and Judge Toney said to them, "Boys, I think you all are mistaken, I voted just like you all, and I think you are doing the party an injustice, I ain't putting it in a false attitude," and he said, "I think plainly that these people are entitled to representation." Mr. Kohn and Mr. Phelps, of course, didn't agree to that, and they left; but before they left there was another matter to complete the conversation. One of them, which it was, I don't know, said, "Well, suppose you just overrule this motion to dissolve." Judge Toney said, "No, I don't overrule this motion to dissolve at all; the motion can't be made without notice," and they said, "Well, just refuse to dissolve it," and I don't know whether the words were said, but I knew what they meant by them. I am not certain whether they said that would give them a right to apply to a judge of the Court of Appeals, or whether I just knew it would; but that was the idea that was conveyed to me, that they wanted him to refuse to dissolve the injunction, and they would then apply to a judge of the Court of Appeals to dissolve it. They then left, and Judge Toney stayed and finished his dictation, and I saw no more of them or Judge Toney until 4 o'clock.

Q. Well, were you in your office at 4 o'clock that afternoon?

A. I was in the office all day. I was quite busy. And when they went out I asked about what it was, and I want to say under oath—some people—

Mr. Kohn: What time are you speaking of now?

A. I am speaking now of after you were out.

Mr. Kohn: What conversation are you speaking of now?

A. What occurred at 4 o'clock.

Mr. Kohn: Between whom?

A. When the judge was holding court in my office.

Mr. Kohn: Holding court in your office?

A. At my office, or the Judge's chambers then, if you choose to put it that way.

Mr. Kohn: Were we present?

A. No, sir, you were not.

Objected to, but objection afterwards withdrawn.

Q. Was Judge Toney in your office that afternoon?

A. When they left, Mr. Kohn and Mr. Phelps, I asked Judge Toney what that was about, and I then for the first time knew that an injunction had been issued, I didn't know of it before at all. Judge then told me and I also saw in the paper that he had announced in court that he would be at my office at 4 o'clock. Judge Toney always comes to my office when he is down town, and frequently has lawyers meet him there, as he feels that he is at liberty to come to my office. He left after the dictation of this opinion, shortly after Mr. Kohn and Mr. Phelps left, and I went on, and nothing further occurred until about fifteen or twenty minutes to four. My telephone rang—bell rang. Somebody—I did have his name, but they got such an accumulation of them, and I didn't think it was anyways important and I mislaid it, and can't find it; somebody away from down town telephoned up, "They fired me through a window," without saying who he was or what he was.

Objected to; objection sustained.

A. Well, I refuse to communicate—I will not state what anybody said through the telephone.

Mr. Breckinridge: We will reserve that because we expect to offer to introduce it (referring to testimony on this point.)

A. Any number of people commenced telephoning. I won't say what they said, but the first man who spoke, I saw that there was going to be some trouble of that kind, and I inquired of him—I got the idea that Mr. W. H. Smith and Helm & Bruce were the attorneys for these people. I went up to Messrs. Helm & Bruce's office and asked Mr. Helm Bruce that these people—Judge Toney not being at the office yet—that the people had commenced telephoning about not being allowed in the polls.

Objected to; objection sustained, but objection afterwards withdrawn.

Q. Tell everything you told everybody and they told you.

A. They told me anybody that telephoned to tell them just to call up Helm Bruce or W. M. Smith or the Honest Election League. That is all there is to that. I came down then and that bell kept ringing. Judge Toney got there, and there was such a tintinnabulation as would have given Poe fresh inspiration. It kept ringing all the time.

Mr. Breckinridge: I suppose that is not legitimate.

By Mr. Kohn: Oh, yes, that is all right.

A. I kept telling—Judge Toney meanwhile had arrived at 4 o'clock—I kept telling everybody that, without bothering the Judge, what they said, they could not talk to Judge Toney over the telephone, that the court did not receive information in that manner, and they should communicate with these lawyers whom I have mentioned or at the Honest Election League, and the matters could be taken up in proper shape there. The first thing you know here came—the Judge was then sitting in my office there—here came Major Pirtle, John Green, John Tevis, and we had nine chairs in the office, and room enough on tables for about six more, and they soon got occupied, and the office got crowded. I sent my typewriter home to get fresh room. They were all there. I kept telling them—Judge Toney kept telling them, "I can not take your personal complaints." Arthur Rutledge was there; all the lawyers that had been refused admittance. Judge sent them away, that he could not receive complaints of trouble in that way; they knew how matters had to be brought up. Directly Mr. Helm Bruce came down with a number of affidavits, whether three or ten, I couldn't say—he had a bunch.

Objected to unless affidavits are produced.

A. Mr. Bruce had several affidavits of these parties—I couldn't state who they were, because I didn't hear them read, but they were affidavits, and John Tevis and Major Pirtle and John Green had gone upstairs to make affidavits, and they came down with Mr. Bruce, and without knowing, of course, I thought that they were those affidavits.

Mr. Kohn: Never mind what you thought.

A. They came down with papers which they said were affidavits. The telephone bell had kept ringing, still more notices, and more people came in, and finally some one, I can't say who it was, suggested that from the number of complaints that were coming in that it was evidence that this was a general refusal to obey the writ of the court.

Mr. Kohn: Who said that?

A. I say I don't know who said it. I really don't know who said it. They were all talking.

Objected to.

A. It was stated there before those people I have mentioned.

Q. (By Mr. Phelps) Allow it to go as a rumor, then.

A. I can name about five people; I think it was one of those five people that said it.

Q. (Mr. Breckinridge) Then what did Judge Toney do?

A. Some one then suggested that Governor Bradley was at the Galt House, and I don't know who suggested that, but I am in the same position that I am on the other; I can name five people, and one of those five people was the one that suggested it.

By Mr. Kohn: Name the five; we don't care.

A. Well, there was Mr. John Marshall, Mr. Robert C. Kinkead—

Mr. Phelps: We are willing to let it just stop at Brother Marshall, that he suggested it.

A. Mr. Helm Bruce, Mr. Arthur Rutledge, and I am not certain whether Mr. James P. Helm was in the office at that time or not, but he was there at some time during the episode, and I would say that one of those people suggested it, but I don't know which one. Judge Toney interrogated as to whether Governor Bradley was at the Galt House.

Mr. Kohn: Who interrogated?

A. Judge Toney. He didn't know that Governor Bradley was in the city, and they assured him that Governor Bradley was, and Judge Toney seemed to feel incensed that his writ had been so contemptuously disobeyed, and I don't think Mr. Kohn's suggestion early in the morning that if he were one of the officers that he—

Mr. Kohn: I suggest that the witness make his argument after a while.

Q. Tell what you know about it.

A. Judge Toney dictated a letter to Governor Bradley, which has been published, and published correctly, and dictated that to me, and I took it in short hand. I think I was mistaken about Mr. Kinkead being in the bunch of five, because Mr. Kinkead came in at this time. He said to Judge Toney that Chief Haager didn't seem to understand that injunction, and that Haager said if Judge Toney would tell him what that meant that he was to see that those Brown inspectors were allowed in, that he would see that they were, and Judge Toney manifested a reluctance, he didn't know whether he ought to send any such notice to Haager or not, but Mr. Kinkead said that Haager wanted instructions, and he wanted them from fountain head, and Judge Toney then dictated to me, which I took direct on the typewriter a letter which he wrote to Haager. That letter I compared afterwards, and from my memory, it is correctly reported in the copy that is filed. The letter to Governor Bradley is correctly reported. I compared that and that is correct.

Governor Bradley: Has that ever been filed?

The Witness: It was printed.

Q. (Mr. Breckinridge). The letter from Judge Toney to Governor Bradley has not been filed in this case?

A. I haven't it, but I wrote it in duplicate.

Mr. Kohn: Let us have the copy.

A. It is correctly reported in the Evening Post of that day; I furnished it to them.

By Mr. Kohn: Have you the Evening Post of that day?

A. No, sir.

Q. (Mr. Breckinridge resumes.) Then which letter was sent from your office first, the letter to Capt. Haager or the letter to Governor Bradley?

A. The letter to Governor Bradley was in short hand dictated first. It was not transcribed at the time that Kinkead came in for

a letter to Haager, and I wrote the letter to Haager direct on the typewriter, direct, and it was sent over, and I immediately wrote the other and it was sent.

Q. Can you now recall at what time it was that these letters were sent from your office?

A. The letters were sent, as near as I could fix a time, about four thirty-five or forty. The way I fix that time is that almost immediately after the letter to Haager was sent the letter to Governor Bradley was sent, and in about as quick a time as you could go over to the city hall, Chief Haager was over to my office. He came in and that crowd was all there, and he said, "I would like to see Judge Toney personally, privately," and they started to go out of the office. I said "It is not necessary," and I opened the door to another office, and I showed Judge Toney and Chief Haager in there, and they remained in there for about ten minutes, and Judge then came back in the office and he was there a short time, and we all left, and I think we were all out of the office by ten minutes after five o'clock. I would say those letters were written at four thirty-five to four forty.

Q. And left your office about that time?

A. Left my office about that time.

Q. What are your politics, Mr. Walker?

A. I am a gold Democrat.

Q. Whom did you vote for in this last race?

A. I voted the straight Democratic ticket, and I voted "yes" on the park bond question.

Q. When you use the word "straight Democratic ticket," you mean the Goebel Democratic ticket?

A. Yes, sir; I thought that was the straight Democratic ticket.

Cross-examined by Mr. Kohn.

Q. You say you are official stenographer under Judge Toney of the law and equity court?

A. Yes, sir.

Q. Your appointment comes from Judge Toney?

A. Yes, sir.

Q. You have stated that he had told you that he would be at your office about eleven o'clock on that day?

A. Yes, sir.

Q. For the purpose of dictating an opinion?

A. Yes, sir.

Q. But did not get to your office until after the time that Mr. Phelps and I came here?

A. He was there probably ten or fifteen minutes before you, I think; I was taking no notice of the time. I wouldn't be bound to whether it was five minutes or ten minutes, but just off-hand, I think it was about ten minutes.

Q. Don't you know as a matter of fact that Mr. Phelps and I fol-

lowed him from the court room to your office direct as fast as we could go?

A. How could I know it; I didn't see you.

Q. Isn't it a fact that he hadn't taken his seat until Mr. Phelps and I came in there?

A. There ain't any question that he was dictating to me, and he don't stand up in a room and dictate. He sits down.

Q. You say he was sitting down dictating when we came?

A. He had started to dictate.

Q. When did he tell you he would be at your office at 11 o'clock on election day?

A. There is a very important case down in Louisville that we had been working on for two weeks.

Q. I didn't ask you that. I asked you when did Judge Toney tell you to be at your office at eleven o'clock on election day?

A. I choose to answer in a way, the only way I can answer it, and if you will just restrain yourself a minute, I will give you an answer.

Q. I don't require any restraint.

A. I had worked for Judge Toney several nights on that same opinion, and the night we last worked on it, I think was the night before, and he wanted me to work Tuesday night, and I had something else to do, and I said, "Judge, I have got nothing else to do to-morrow; suppose you come here at 11 o'clock," and he said, "all right," and I made the engagement for him to come up at 11 o'clock in preference to my going out to his house the next night.

Q. Are you through?

A. Yes, sir.

Q. Will you answer me when it was that you made the arrangement for him to come to your office at eleven o'clock?

A. If you had listened to me, I said it was the night before when I was out at his house.

Q. Don't you know that the night before that Judge Toney at his house had a reception and a party and that you were not there at all?

A. I don't know, he may possibly have had, but I was at Judge Toney's house, I thought, every night right straight along for about ten days. We may have skipped that night.

Q. Was Mr. Helm Bruce there with you?

A. No, sir; I have never seen Mr. Helm Bruce—

Q. Who else was there with you that Sunday night—weren't you there on Sunday night?

A. I never worked for Judge Toney on Sunday night in my life. I have been out at his house.

Q. Were you there at his house—do you now swear that you were at Judge Toney's on Monday night previous to the election?

A. I thought I was there. I think I was there nearly every night for about several—oh, several days before that, but I don't charge

Judge Toney for anything he dictates to me, and I don't put any charge down on my book against him, and I can't keep any tab on those things.

Q. I never asked you whether you ever charged him or not.

A. I am explaining; if I had been working for you, I would have had it down on my book.

Q. You might have got the cash from me in advance.

A. You are good to me for anything.

Q. He didn't come to your office at eleven o'clock, did he?

A. It made no difference to me whether he came at eleven or eleven thirty. I wasn't keeping tab on that. I think he got there about eleven o'clock.

Q. Don't you know that this petition was filed, as the record shows, in the case of John Young Brown against Weaver, at fifteen minutes past eleven, and that it was taken into his court and he granted the injunction and signed the orders and then went to your office?

A. I don't know when the petition was filed. I never saw the petition before it was filed or haven't seen it yet, to remember it. He said he would be there at eleven o'clock, and he came in, and he dictated a short while. He must have got there about eleven o'clock. You came in, I think, about fifteen or twenty minutes before twelve, along there some place, and I think you were some time behind him, but it wasn't a nickel in my pocket to know anything about these times. I wasn't paying any attention to time. I didn't care for time. That was my dead day.

Q. It was a dead day? You didn't care for time?

A. No, sir.

Q. When Mr. Phelps and I came into your office, isn't this true as to what occurred: Wasn't the statement made by Mr. Phelps or myself, "Judge, why didn't you wait for us five minutes until we could get there to present our side of this question?"

A. Mr. Kohn, I don't know whether that happened or not. I don't remember such a thing, and I heard afterwards, I heard Boldrick say something about that, and I don't think I heard you all say that.

Q. Didn't Mr. Phelps or I say to him, "This proceeding of yours is an outrage and it will ruin the Democratic party in this city, and we think the least you can do for us is to let us enter a motion to dissolve this injunction, and if you desire, you can overrule it and give us four hours to ask for a re-instatement of the injunction, we will try to reach a judge of the Court of Appeals to present the question to him."

A. Judge Toney said in your presence, it refreshes me on a little that did occur. But you certainly did not tell Judge Toney that any order that he entered was an outrage. You know Judge Toney too well, but you did say something about wanting him to overrule and give you leave to apply—I didn't know a while ago whether I

knew that fact, or whether you said it, but I remember now, you did say it. About another thing, it was not you that said that that was ruining the Democratic party. It was Judge Toney told you that you were all ruining the Democratic party.

Q. You are sure of that?

A. Quite sure.

Q. Wasn't this statement made to Judge Toney: "Let us enter a motion to dissolve the injunction; if you desire, you can overrule that motion and give us four hours to apply for a re-instatement of the injunction to a judge of the Court of Appeals?"

A. You wanted to enter a motion to dissolve the injunction. Judge Toney asked you where was your notice. You said, I think you said, they didn't have to give notice. Judge Toney said, they followed the forms of law, you have to give notice, and then that conversation ensued that I have related heretofore about the giving of notice, and the serving of notice on Smith, and then you all asked, "Well, then, overrule it and give us time to apply." And the Judge said, "I don't overrule it. I will hear you at one o'clock, but I don't overrule, because you can't enter the motion until you give notice, and I will take it up at one o'clock with you."

Q. Didn't we say to Judge Toney, "Judge, it only lacks four hours till the polls close; you gave this injunction without notice; you refused to wait five minutes for us to come to court to be heard, now you ask us to give notice to the other side on a motion to dissolve. We can't do it, and you know we can't, and to accomplish the object proposed it would take every minute of the time for us if we are successful in catching Judge Hobson at Elizabethtown to get this injunction dissolved before the time comes for this taking effect." Didn't that occur?

A. It certainly did not occur consecutively like that. That may have been the burden of a good long discussion, but it didn't occur consecutively like that, as you have stated, although, excepting that five minute remark of yours in the question, I think it substantially did occur, but stretched over a considerable space of time.

Q. And didn't we beg the Judge to allow us to enter a motion then and we would try to find the parties, and didn't he say, "Mr. O'Neal is one of the counsel and you might see him;" didn't that occur?

A. You didn't beg him; in fact, you were not in a very begging humor. You wanted to get out of the office as soon as you could; the minute he said you had to have notice, I think your hands went up.

Q. Wasn't this the time that I wanted to get out of the office, when he said to me, "Let me explain this matter;" I said, "I need no diagram for an explanation. If that is the idea, let us go," and started out of the office?"

A. No; I think the time you wanted to get out was when he started to telling you that he thought that that court was hurting

the Democratic party, and you wanted to quit then, and you said, "Come on, Zack."

Q. You think that caused me to quit, do you?

A. I thought you were ready to quit right from the time that he said, "Where is your notice," but Mr. Phelps was the man who held you on.

Q. When we found he would not hear any motion, allow any steps to be taken in the matter at that time, didn't I say to him, "Why, Judge, you gave this injunction without notice, it is a permanent injunction, you had no jurisdiction to give it, and now you refuse to give us even the benefit of an application to a judge of the Court of Appeals for a re-instatement?"

A. Well, now—

Q. Ain't that exactly what occurred?

A. No, it ain't, because you put a consecutive statement there which did not happen exactly that way. You said that they had been given that injunction, that they didn't have to give any notice to get the injunction, and Judge Toney immediately replied by telling you they followed the forms of the law, and you said, "Now, we want to make a motion to dissolve," and Judge says, "And the law requires you to give notice." You said, "We can't give notice," and then Judge suggested that the counsel were near and I spoke up, and where on earth I had got that Smith was a lawyer, I don't know, but I had understood that Smith was the lawyer, and I didn't know until this minute that O'Neal was the lawyer. I said, "I can catch Smith for you," that I was willing to sit down and write the notice on the typewriter and catch Smith.

Q. How did you know that Smith was the lawyer?

A. I don't know.

Q. You hadn't seen the petition?

A. No, sir, and didn't know the petition was filed, but something in the conversation. Is not Smith one of the lawyers?

Q. I am asking you.

A. I had a notion that it was stated there that Smith was the lawyer, some way or other.

Q. You thought Bruce was the attorney—Helm Bruce?

A. That was way along in the evening when I had seen the newspapers and there was something in the newspapers about Helm & Bruce some way or another.

Q. Do you mean to say that Helm & Bruce were lawyers in that case?

A. I don't know whether they were lawyers or not. I knew they were lawyers in that matter.

Q. Don't you know if you saw the petition, they were not?

A. I have this minute said I didn't see the petition, I haven't seen it yet.

Q. Then you don't know who the lawyers were?

A. No.

Q. You don't know how it was that you got Mr. Smith mixed up in it?

A. I think Smith was mentioned right in there.

Q. By whom?

A. I don't know by whom, but I think Smith—I don't do any work for Mr. O'Neal, and he never impresses me as much as Mr. Smith does, whose work I do.

A. Mr. Smith was not there?

A. Mr. Smith was not there. Mr. Smith had been in my office that morning about some other matter not connected with this at all.

Q. Didn't I say to Judge Toney, "Judge, all we want now is to be given an opportunity to present this matter to a judge of the Court of Appeals. I don't think you have any jurisdiction," and didn't he then commence to show me why he had jurisdiction and try to argue the question? Didn't I say, "Well, if you want to hear us on the motion, all right." He said, "I can not hear you unless you give a notice."

A. He did say he couldn't hear you unless you gave a notice. You wanted to apply to a judge of the Court of Appeals; I remember that perfectly.

Q. Didn't we pull, one of us, pull out our time-piece and say, "We have got less than four hours now to get this injunction re-instated if you dissolve it, even if we are lucky enough to catch Judge Hobson at Elizabethtown?

A. If you pulled out your time-piece and said you had less than four hours it was not so, because I was looking at the city hall clock, and it was about fifteen minutes before twelve.

Q. From that time until four, isn't it four hours and fifteen minutes?

A. Yes, but it isn't less than four hours.

Q. Don't you know we were talking there over fifteen minutes?

A. No, sir; I could not.

Q. You swear it was nearly a quarter of twelve when we got there?

A. About that.

Q. Then you say—were you present when these orders of injunction and summons were dictated in your office?

A. The orders of injunction and summons were never dictated in my office, nor do I know anything about them, nor had I ever seen them until I saw them up here the other day.

Q. Were you not in your office a few days before the election when Mr. Kinkead dictated some pleadings or some papers in your office?

A. I have not done five cents' worth of work for Bob Kinkead except in this election—

Q. That is not the question.

A. He didn't dictate anything in my office.

Q. Didn't he in the presence of Judge Toney dictate orders?

A. In my office?

Q. Yes.

A. He did not.

Q. In the presence of Miss Dunkerson, the stenographer of Mr. Young?

A. No, sir; he didn't dictate any orders of any kind or description, and I give you my word that excepting these contest election cases I haven't done one nickel's worth of Bob Kinkead's work for Bob Kinkead in eight years.

Q. Dictated by Judge Toney, then?

A. Not in my office.

Q. Where was it done? I mean dictation by Judge Toney in the presence of Mr. Kinkead or Mr. Kinkead in the presence of Judge Toney where Miss Dunkerson was present, and where Judge Toney should have said, if he said it, "Bob, just put in what you please, I will be on hand early in the morning?"

A. No, sir; he never said any such thing as that. The only dictation to my knowledge that Judge Toney ever did in my office was the dictation of the two letters, one to Haager and one to Governor Bradley. The dictation to Haager was in response to what Bob Kinkead said was a request from Haager for information, nor did any of my typewriters do anything of it. I know what goes on in my office and what my typewriters do, and I know that my typewriters never did any dictation for Judge Toney, or any work of any kind while Bob Kinkead was there, or that he suggested anything, or anything that might be given a strained construction looking to such a thing as you have indicated in your question. The only thing that ever happened in the office when Bob Kinkead was there—in fact, I believe that is the only time Bob Kinkead has been in my office in eight or nine years, was when he came there for that, with a request from Capt. Haager for information.

Q. Are you through with the answer to the question?

A. Yes.

Q. I will ask you again, did it occur before the election, I don't refer to what occurred on election day?

A. When I tell you that a man hadn't been in my office for eight years, that means eight years. It don't mean skipping one day. I say that Bob Kinkead was not in my office, that he didn't dictate anything.

Q. In anybody else's office near you?

A. I didn't hear any dictation. I tell you I haven't seen Bob Kinkead in the sense of work, I have done no work for Bob Kinkead in my office or elsewhere. You evidently are after something that you have got mixed on.

Q. No, I don't think I am mixed. I haven't even had a mixed drink. Who was it told you Judge Toney would be back at your office that afternoon?

A. It was published in the afternoon papers that Judge Toney had announced in open court that morning when he issued these injunctions that he would be at my office at four o'clock. I generally read the papers.

Q. What paper did you see that announcement in?

A I can't say.

Q. What was he to be at your office at four o'clock for?

A. I haven't the slightest idea—didn't inquire.

Q. Was he there before four o'clock?

A. Just a minute or so.

Q. Now, you say that you received numerous telephone messages from all over the city, and I believe you refer to somebody who had said he had been fired out. How did they know your telephone ring, that you had anything to do with this?

A. Well, the evening papers, as I said, the afternoon papers said that he would be at my office. At every telephone in the city of Louisville there is a telephone book. By looking under the W's you could find my name and my number opposite.

Q. Did Judge Toney announce that he would be at your office, giving your name and address; you mean to say that occurred, or that the papers published that?

A. The papers said that he announced that he would be at Clarence Walker's office. Whether he did or not, I don't know. I was not there and I am not omniscient; I can't tell what occurred when I was not there.

Q. What time did those telephone messages occur—commence?

A. One came in about twenty minutes to four, and then there wasn't any more until just about four, and then they came, and they came running.

Q. They all came to your office?

A. They came to my office.

Q. You don't know who told them to telephone to your office?

A. I haven't the slightest idea.

Q. Who told Mr. Marshall that Judge Toney would be at your office at that hour?

A. Well, I don't know who told him. Everybody knows just like you know, and like every lawyer in Louisville knows, that when Judge is off the bench that my office is about the best place to catch him, because he is frequently there doing work. I have an average call, I guess, I will have an average call for Judge Toney two or three times a day, every day, right straight along.

Q. Were these gentlemen there simply because of an appointment with Judge Toney?

A. If they went there in pursuance of an appointment, Judge Toney had broken the appointment lots of times, because everybody was chasing around to my office. They just interfered with us, trying to find Judge Toney, and Judge Toney was not there from the time you left until four o'clock.

Q. I thought you said he had announced he would be there at four o'clock?

A. I said the paper announced, and other people—a dozen people were in there between twelve o'clock and four o'clock, wanting to know where Judge Toney was.

Q. At four o'clock—about four o'clock you say that Mr. John Marshall, who was a candidate for Lieutenant-Governor, Mr. Kinkead, who was one of his warm adherents, Mr. Helm Bruce, and Mr. Helm, I believe you mentioned, and who else?

A. Arthur Rutledge and John Tevis and John Green, the stock and bond broker, and Major Pirtle and then half a dozen that I didn't know.

Q. They were all there at your office, speaking to Judge Toney, weren't they?

A. Well, they were there, a lot of them were, and then at four o'clock, when Judge Toney was there, they were there, but I don't say that they were all there at one particular time, but they were coming and going.

Q. What were they coming there for? If not to see Judge Toney, were they coming to see you?

A. They came to see Judge Toney.

Q. Seeking Judge Toney?

A. Yes, sir; they were seeking to bring to his knowledge the fact that these election officers were disobeying the writs he had issued. I tried to convey that idea.

Q. And which the Court of Appeals, you might have added, decided were absolutely void, being as you are giving your opinion on it, you might have added that to it.

A. I do not practice law, and do not care about keeping up on the points—

Q. You are giving an opinion as to what they wanted—not the facts, but an opinion?

A. As to what they wanted—I heard them.

Q. When these men were there, they were all opponents of Mr. Goebel?

A. Every one was. I was the only Goebel man in there.

Q. You say that he held court?

A. I don't say that he held court. He was sitting in chambers.

Q. Does he ever hold court in your office?

A. He sits in chambers there, just like he does other places frequently, wherever you can catch him. You know as much about that as I do—more. You have been hunting for him yourself.

Q. At your office?

A. You hunted for him that morning.

Q. He has a chamber at the court house?

A. Where?

Q. A private room back of the court room?

A. That is a jury room.

Q. And that is a room he generally sits in to hear cases in chambers?

A. He sits more frequently in my office to hear cases in chambers.

Q. Was there a single person there in the interest of Mr. Goebel and the State Democratic ticket?

A. No one representing Goebel; I was the only Goebel man there.

Q. Had there been any notice that there would be an application made before the judge of the circuit court, law and equity division, for an order to Colonel Haager directing him to force his way into the polls?

A. Not that I know of.

Q. Did he require any notice to be given of that notice?

A. I don't think it was a motion.

Q. What was it; whatever it was, he acted on it?

A. I understood that Col. Haager did not construe that injunction that he should see that these inspectors got in.

Q. And he dictated to you, the official stenographer, an order to Capt. Haager?

A. Yes, sir.

Q. Was there any notice of any character given or intended to be given of the application for that motion?

A. There had been no notice.

Q. No person on the other side when it was given?

A. Not a soul.

Q. Did Judge Toney say to them, "Gentlemen, you will have to give notice to Mr. Kohn or Mr. Phelps before I will entertain a motion to force the chief of police to break into the houses; force his way in?"

A. No, sir; I guess if anybody had told him it would have been pretty hard to have found them.

Q. Did not you, yourself, offer to serve the attorneys the notice?

A. I offered to serve the attorney.

Q. Then you say he afterwards dictated an order; first dictated an order to Governor Bradley?

A. I didn't say he dictated an order.

Q. A letter?

A. Circuit judges can't give orders to the Governor.

Q. You say that circuit judges can't give any order to the Governor?

A. Not on matters like that.

Q. What was it?

A. A letter.

Q. A request, was it?

A. No; it was not a request.

Q. What was it?

A. This is the original letter; that is, the letter that I wrote. I will read it to you: Louisville, Ky., November 7, 1899. Governor

W. O. Bradley, City, Sir: Two mandatory injunctions were to-day issued by me as one of the judges of the Jefferson Circuit Court, requiring election officers at the election precincts to allow the inspectors for the Brown and Republican tickets entrance to the voting precincts to witness and inspect the count. It has been reported to me that these injunctions are being contemptuously ignored and violated. I have to-day issued the decree of judgment of law. I am not a ministerial officer and can not enforce it. I call your attention to this fact as chief executive of the State that you may take such action to see that the laws are executed as you may deem proper under the circumstances. Sterling B. Toney, Judge Jefferson Circuit Court, Law and Equity Division." Now that is not a request, nor is it an order.

Q. If it is not an order; if it is not a request; what is it?

A. That is not for me to say.

Q. Why did he write it, do you know?

A. How could I?

Q. He signs this as judge of the law and equity court?

A. Yes, sir.

Q. Was there any notice given of the application for this letter to Governor Bradley?

A. Notice to whom?

Q. To any one.

A. Not that I know of.

Q. Did he say, "Gentlemen, I can't do that until you give notice to the other side," like he expressed to Mr. Phelps and myself when we asked him for the motion to dissolve?

A. No such conversation took place.

Q. Were any affidavits filed?

A. There was some; Mr. Helm Bruce had in his hand some papers that he said were affidavits.

Q. Mr. Walker, you know what I asked you, could not you have answered yes, or no, and then make any explanation you might desire. Were there affidavits filed?

A. There was no clerk to file them with; no one to take any papers, but Mr. Helm Bruce had there a number of papers that he said were affidavits; and there were seven or eight men there ready to make affidavits.

Q. Were there any filed?

A. Who was there to file them; you can't file affidavits unless you have the clerk there.

Q. No affidavits offered to be filed?

A. Affidavits were presented, but they were not offered to be filed, because I would not have had the right to file them.

Q. Were they read?

A. I don't know whether they were read or not.

Q. Were they marked filed?

A. I don't think they were.

Q. Are they in the record of the case?

A. Haven't the slightest idea.

Q. Whose affidavits were they?

A. I did not see the signatures; but John Tevis, Arthur Rutledge, Major Pirtle and John Green went up stairs to make affidavits; they came back with Helm Bruce and he had the papers which he said were affidavits, and I don't think it would take much of a stretch of the imagination to imagine whose affidavits they were.

Q. Who were the attorneys for the plaintiff in the John Young Brown case?

A. I don't know.

Q. At whose suggestion was the order made and the letter written by Judge Toney to Capt. Haager?

A. Just after Judge Toney had dictated to me in shorthand that letter to Governor Bradley, Bob Kinkead came into the office and said, "Judge—

Q. I asked you at whose instance was it done?

A. I have explained that Bob Kinkead came in—

Q. At whose instance was the letter to Governor Bradley written?

A. I can't say, but one of the gentlemen there.

Q. Mr. Marshall was himself a candidate for lieutenant-governor on the Republican ticket?

A. Yes, sir.

Q. Mr. Helm Bruce and Mr. Helm and Arthur Rutledge were all opponents to Mr. Goebel?

A. I think so.

Q. Mr. Bruce and Mr. Helm were attorneys for the L. & N. railroad company?

A. Yes, sir.

Q. They were not there as representing either the plaintiff or the defendant in that case?

A. I think they were there representing the Honest Election League.

Q. Mr. Kinkead was a Republican candidate for park commissioner?

A. Yes, sir.

Q. Now, then, Judge Toney wrote this order to Capt. Haager, or letter, just as you please to term it, Captain Haager over; did you hear the conversation?

A. No one heard the conversation, only that Capt. Haager said, I want to speak to Judge Toney privately, and they went into the next room, and stayed there for some time.

Q. You don't know what occurred then?

A. I could not.

Q. Will you please give me again the names of those gentlemen there?

A. John Green, Arthur Rutledge, Major Pirtle, John Tevis; they were the ones that went up stairs.

Q. By whom was the letter sent to Capt. Haager?

A. Bob Kinkead.

Q. By whom was the letter sent to Governor Bradley?

A. I don't know by whom it was sent.

Q. One of the five?

A. You put me into a funny position; I know it was taken by one of the five, but I don't know legally which one.

Q. Who was it given to there in your office?

A. One of these five, I don't know which.

Q. You don't know who conveyed it to the Governor?

A. Legally I do not.

Q. On Sunday Governor Bradley was in Louisville—so publishing the papers?

A. If you take everything in the papers to be true—

Q. You spoke about some publication?

A. You asked me if I knew Governor Bradley was in Louisville. I do not.

Q. I ask you now, did not you see a publication in the paper on Sunday that Governor Bradley had canceled an engagement to speak at the Auditorium, and had sent a letter to Mr. Augustus E. Wilson, giving as an excuse for his not speaking, that he would be called upon to take charge of the militia on election day; and therefore he would not speak that night?

A. I saw that publication; I thought it was Monday night he was to speak; that I saw the publication.

Q. Did not you also see—perhaps it was Monday night—did you not also see in the paper—was it not published that Governor Bradley was in Louisville and as chief executive of the State, was himself in charge of affairs on election day, and that he was at the Galt House?

A. I do not know that I saw it exactly that way, but substantially it was.

Q. Substantially, what do you mean?

A. You said he was going to be "in charge of affairs in Louisville." I don't think it was exactly that way.

Q. Suit yourself.

A. I don't want to be suited about it.

Q. But you said that was substantially the publication?

A. No, sir; I don't think they stated that Governor Bradley "would be in charge of affairs." It said he would be "in charge of the military."

Q. Then in charge of the military?

A. I am not certain about it exactly.

Q. Was it known by everybody in Louisville that Governor Bradley was in Louisville?

A. If they believed the papers they knew it.

Q. There was certainly as large a publication given to that, as to the fact that Judge would be at your office?

A. Yes. I don't know, because that had actually, tangibly, happened.

Q. Had not the other actually and tangibly happened?

A. They said he was going to be in charge of the military. There is a good deal of difference between a thing that is going to be and something that has been done.

Q. Was not the letter to Governor Bradley and to Mr. Willson published in all the papers?

A. I believe it was.

Q. And was not the statement published that Governor Bradley was in Louisville and had been since Sunday at the Galt House?

A. Yes, sir.

Q. I understand you to say that at no time and at no place was there any dictation made by Judge Toney or Mr. Kinkead in the presence of Miss Dunkerson?

A. The only dictation that took place in my office when Bob Kinkead and Judge Toney were present was when Judge Toney dictated that letter to Chief Haager; and he did that in response to a request from Haager conveyed by Kinkead and he may have asked Kinkead something about that. I do not remember Miss Dunkerson being present.

Q. I want you to answer for me this simple question: Before the election day at any time or place, were you present in your office when either Judge Toney was dictating or Mr. Kinkead, both of them being present, in the presence of Miss Dunkerson, the stenographer in Colonel Stone's office?

A. The only time was that—the day of the election. At no time before that day was Judge Toney and Bob Kinkead in my office together. That was the first time that I remember seeing Bob Kinkead in my office for years.

Q. Why did you go up to Mr. Helm Bruce's office; who told you that Helm Bruce had something to do with that case?

A. I don't know whether it was that I had an idea he had something to do with that case, or whether I knew they were attorneys for the Honest Election League.

Q. Were they attorneys for the Honest Election League?

A. Yes, sir; in certain matters.

Q. Don't you know that Mr. W. M. Smith was the only attorney for the Honest Election League?

A. I know that Helm and Bruce appeared in open court in the prosecution of people there. I knew they were representing the Honest Election League.

Q. In what case?

A. In the Bozarth case.

Q. In the case of John Young Brown against Bozarth?

A. Yes, sir.

Q. Don't you remember that Mr. Smith was the only attorney of record?

A. I don't know anything about the record, but Helm and Bruce were there.

Q. I mean before the election did you see him managing any affair for the Honest Election League?

A. I certainly knew they were representing the Honest Election League.

Q. How did the Honest Election League have anything to do with this suit of John Young Brown?

A. I do not remember the motive that induced me to go up there. I had a notion they were his lawyers in the matter some way.

Q. I understand you to say you went to consult with Helm and Bruce about this case, whom you believed were attorneys for the Honest Election League. Now, I want to ask you, if that be true, what connection did the Honest Election League have with this injunction?

A. In the same answer in which I said I thought he was the Honest Election League attorney, I said, I did not know whether he was an attorney in that suit or not; or whether he was an attorney for the Honest Election League.

Q. Did you know either one?

A. I knew that he had some connection with it, and when I got there I got the information I wanted to get; and that was to have these people to telephone—to have these people who were telephoning to me, to telephone to either Mr. Smith or the Honest Election League.

Q. He told you that?

A. Yes, sir.

Q. Mr. Helm Bruce was not an attorney of record; and whom you believed was an attorney for the Honest Election League, and whose name is not signed to the papers in the case of John Young Brown, told you that if any one telephoned to you to tell them to telephone to the Honest Election League or to Mr. Smith, or to his office?

A. I told him that these people were telephoning to us, and he said to tell them to telephone to the Honest Election League to Mr. Smith, or to his office. I remember I had the numbers of those telephones so I would not have to look them up. I said telephone to 520, that was Helm Bruce's office; or to so and so, the Honest Election League; or to so and so, Mr. Smith's office.

Q. I will ask you if on Monday, the day before the election, Judge Toney held any court?

A. It was equity week, and I did not have to be there; I don't recollect whether I was there or not.

Q. Don't you recollect that on Monday court adjourned until Wednesday morning at ten o'clock?

A. I do not recollect.

Q. Has it been customary for Judge Toney to hold court on election day?

A. I don't remember about having any court on election day.

Re-examined by Colonel Breckinridge:

Q. You are not clerk of that court?

A. No, sir.

Q. And have no power to file papers there?

A. No, sir; not at all.

Re-cross examined by Mr. Kohn:

Q. You say you are official stenographer for Judge Toney?

A. No, sir; I do not.

Q. For Judge Toney's court?

A. I said I was official stenographer of the Jefferson Circuit Court, Law and Equity Division. Judge Toney is judge of that court.

Q. There is a distinction between his being the court and being judge of the court.

A. Yes, sir; a big one.

Q. Were you also official stenographer for the Evening Post.

A. No, sir; the Post has no official stenographer. There is no such thing known as the Post's official stenographer.

Q. Were you doing for that paper as stenographer?

A. I do all the Post's work.

Q. Had been doing it prior to the election?

A. Yes, sir.

Q. Including election matters?

A. Yes, sir, and they paid me well for it.

Charles F. Huhlein, a witness called for contestee, being duly sworn and examined by Colonel Breckinridge, deposed as follows:

Q. What is your residence?

A. Louisville.

Q. What is your occupation?

A. General manager of B. F. Avery & Sons' Plow Works.

Q. Were you a resident of Louisville, and were you present in the city on the last election day, November 7, 1899?

A. Born and raised there, and lived there all my life, with the exception of one or two years' absence.

Q. Were you there November 7th?

A. Yes, sir; I was.

Q. At the election in the city of Louisville?

A. Yes, sir.

Q. Did you have any conversation with Governor Bradley on that day about calling out the troops?

A. I did, sir.

Q. Where?

A. At the Galt House.

Q. Will you state to the commission what were the circum-

stances under which you sought that conversation; what had happened to induce you to seek him?

A. After voting at my precinct, I went into the Tenth ward, where I was born and raised, in order to find the precinct at which I was to act as inspector at the close of the polls. That was in the morning that I went down there; I did not know the exact location of the precinct; and in going through the ward to find it, I found a crowded precinct on Green street, precinct No. 24, Tenth ward; there was obstruction of the voting there, criminal obstruction of the voting, as I believed; a large number of darkeys in line patiently waiting a chance to vote. I took out my watch and found that the officers were receiving not more than two votes every fifteen minutes, for several fifteen minutes. I was informed and had partly seen that the election officers had been arrested or served with some process; and there was no improvement in the speed of the voting. I finally went with Mr. John A. Armstrong, who happened to be there—a retired business man of Louisville—to the city hall to see if we could find some remedy for the criminal obstruction of the voting, as I believed. I went to the city clerk or his deputy, Bob Gray, to get warrants. I said to Mr. Gray, they are obstructing the voting down there, and I want warrants for these three men; I understand these are their names; I would like to have these warrants, if I may have them, to return there, and if they have improved their method of taking in votes and are conducting the voting properly, I do not want, certainly, to persecute these men. If they are not, I want to be in a position to hand these warrants to somebody that will arrest these men. He said, "I can't give you those warrants; if you swear out those warrants they will be given to an officer who will serve them." I went up stairs and found and stated to the city attorney—

Q. Who was the city attorney?

A. Colonel Henry L. Stone, I think, is his name. I stated the facts to him and he wrote an affidavit after hearing the case. In some further conversation he said, "From what you tell me, there is a state of affairs there"—(Object to what Col. Stone said) very well, I will say that I was acting under the advice of Col. Stone—I stated the case to him.

Q. Did Col. Stone say anything to you about the adequacy or inadequacy of the remedy of getting out warrants?

Objected to.

By the chairman: Let him tell what he did.

Q. What was the information you acted on?

A. Col. Stone said it seemed to him—(Objected to), I went to see Governor Bradley then and we, Mr. Armstrong and myself, stated the case to him.

Q. What was it you stated to Governor Bradley?

A. I stated to him the criminal obstruction of the voting as I had seen it; and that voters were patiently watiting in line and had

been, many of them, for hours; and the exceeding slowness of the vote. I stated that Col. Stone said that it seemed to him that a company of militia ought to be or might be kept down there to remove those men who were doing such flagrant acts.

Q. What did Governor Bradley do?

A. He heard us very patiently, and asked whether there was any disturbance down ther, and I said, "You can't call it a disturbance." He says, "Is there any rioting there. "No, sir," I says, "the men are quiet and orderly; they are simply not taking the vote with any promptness." I said it is shameful to allow those men, as I have seen those men, stand there in the line by the hour and have the vote obstructed and taken at the rate of about two every fifteen minutes. Governor Bradley said, "Are the civil officers there able to keep order?" I said, "There is no disorder." He says, "Is there a riot or any disturbance that the civil officers are not controlling or are not able to control?" I says, "No, sir." I says, "Outwardly things are going quietly, but they are not lettiang the darkeys vote." He said, "I will not send the troops unless there is a riot and disorder, and a state of affairs that border on that, which the civil authorities are unable to control." That is the substance of our interview.

Q. At what time was that?

A. Between twelve and one o'clock.

Q. Were you the Republican inspector at any precinct?

A. At the close of that day I went to the next precinct in that ward and acted as Republican inspector.

Q. At what precinct was there any trouble or disturbance of any kind, at the door?

A. When the inspectors were admitted at four o'clock, a man, giving has name as Tom Taylor, to me, representing himself as deputy over and over again, saying he was there representing Sheriff Bell, to see fair treatment, objected to the presence of the Brown inspector; and the Brown inspector had credentials and showed them and stated he proposed to stay there. I reasoned with the man and told him that I had my credentials and that this man had his credentials and we had no objection to the officers going ahead with the count. He entered upon a long line of bull-dozing tactics that are familiar in that ward; and after tactics of obstruction and delay, and seeing that all we wanted was a fair count, and we were going to have it, he volunteered to leave the polling place. He left the polling place and the ballot box was opened and the ballots were spread on the accommodations there and the count proceeded. He came in about the middle of the count and demanded admission, I thing through a ward heeler who gave his name as John Keene. He says, "here is a man with the Hambrick credentials," and the substance of the conversation was—This man who gave his name as Taylor, when he returned, commenced to find fault. I said "I have no objection to his coming in, but I do not think he ought to be

permitted to come in, but they let him in, and when he came in he immediately began to find fault with nearly everything that was being done.

Q. We were going along satisfactorily; the vote was being honestly counted; it was signed up; it was announced. The policemen were passing; I noticed them with their badges and helmets. The count was made up and the certificate signed in proper order.

Q. Is this man who represented himself as deputy sheriff, representing Mr. Bell, the same man who returned claiming to be the Republican inspector for the Hambrick ticket?

A. Yes, sir; his credentials were signed with a rubber stamp.

Q. You did not know whether, of your own knowledge, he was a deputy sheriff of Mr. Henry Bell?

A. I have no knowledge on that subject. I was informed here to-day, upon inquiring upon a court official whether he was a deputy sheriff, and was told that he was not.

By Mr. James: That is not competent.

Q. Did you afterwards see in one of the papers in Louisville that that count had been done at the point of the pistol?

A. I was astonished to read in the Courier-Journal a few days, or some days following that election, three affidavits, one by Taylor, one by the clerk or other officer, and one of the officers named Weidling, and a third by Fatty or Patty Miles, Goebel inspector. The affidavit differed some. In substance the affidavits were—(By Mr. Kohn: Let us have the affidavits. We object to the statement.) Objection sustained, to which contestees except.

Q. Are you a citizen of Louisville?

A. I am, sir.

Q. In your judgment was there any falling off of the vote in Louisville because of the presence of the military at the armory on that day?

A. Not the slightest on that account, sir.

Q. In your judgment was the assembling of the military at the armory a wise and proper thing or not?

A. An exceedingly wise thing in my humble judgment.

Q. Why was it so, will you state to the committee?

A. Because of the excited and bitter campaign that was then culminating. In a general way I should say—danger that peace and order were assured that there might be trouble. I should say that it was an assurance of intended and unexpected good order.

Q. Was it a peaceful election?

A. At the precinct I passed it was exceedingly so.

Q. Did you see any soldiers on the streets that day?

A. I do not think I saw a one sir; have no recollection of having seen a soldier that day.

Q. Do you know of anybody in Louisville, if so, wil lyou name him, who was intimidated, or prevented from voting by the fact that the regiment had been assembled at the armory?

A. I know of none sir. I do not believe there were any.

Q. Do you know of anything about the number of voters who resided in the boundary or precinct No. 24, I believe it was, in which the obstruction was?

A. I know by common report.

Q. About what is it?

A. Between two and three hundred voters.

Q. Do you know what was the number of votes actually received at that precinct?

A. My recollection is, it was between ninety and one hundred.

Q. The number of resident voters was about how many?

A. My impression is between two and three hundred.

Q. Is that understood to be a strong Republican district?

A. Decidedly so; nearly in the line there; a darky neighborhood.

Q. Do you know about how many Democratic votes in that precinct ordinarily?

A. I presume two or three dozen.

Cross-examined by Mr. J. A. Scott.

Q. In what precinct do you live?

A. I can't call the number; in the sixth ward; I vote on Second street near Burnett.

Q. Was this the precinct where you were assuming to act as inspector?

A. It was not.

Q. How far was it from your place?

A. About two miles; right where I was born and raised; I know the people down there.

Q. Did that have anything to do with your duties as inspector; the fact that you knew the people?

A. It did not effect me in any way, I tried to do my duty.

Q. You say that you are manager of the Avery plow works?

A. Yes, sir.

Q. How many men under your charge?

A. On our roll to-day, between five and six thousand.

Q. Did you have anything to do with organizing those men against the Goebel ticket?

A. No, sir.

Q. How did it happen that you were elected as inspector of election on that day; who selected you?

A. I received in the mail; found at my home the evening before the election a letter giving me credentials as Republican inspector.

Q. Did you know that you were to get those credentials before that?

A. I did not.

Q. Who sent that letter?

A. The credentials were signed by the officers of the Republican committee, I do not recall the names.

Q. You don't know whether they sent you the letter or not?

A. I presume they did.

Q. You pretended to be a Democrat at that time?

A. No, sir.

Q. Are you not registered as a Democrat?

A. No, sir; as an independent. I distinctly announced and Mr. Phelps' brother was one of the registration officers, that I was independent in that race.

Q. I believe you said that you went on your way to the polls where you was assuming to act as inspector and you accidently came across this line of negroes at another poll?

A. Yes, sir; purely accidentally.

Q. What business did you have interfering with that election?

A. I did not interfere with it.

Q. Was that any concern of yours; did you have anything to do with that?

A. It was my concern in that I was a citizen of Louisville; and I saw a large crowd congregating at that precinct, and at that time I did not know but what it was my precinct.

Q. Did you think it was your precinct?

A. I didn't know but what it was. The precincts have all been redistricted., as Mr. Phelps knows.

Q. You did not remember the precinct where you had been born and raised?

A. You are laboring under a misapprehension, as I presume you want to be fair. My credentials gave the number of my precinct without the location, and I got off the car at about the center of the tenth ward and I walked out.

Q. Will you answer that question; did you stop at that polling place under that apprehension, that that was the place where you was assigned?

A. Yes, sir; I did.

Q. You did?

A. Under the assumption that possibly it was; probably it was.

Q. Did you ask some of those people who were lined up there; or did you have any complaint from any particular party?

A. I assumed that most of them were Republicans from the fact that they were colored people.

Q. Did you find out; did anybody tell you there was some complaint about the voting, or did interested Republicans come and tell you that?

A. I won't be certain about that. I will say if I went and asked any particular man I do not recall it.

Q. How did you get the information that they were taking fifteen minutes to vote two persons?

A. I took out my watch and found out how long they were taking.

Q. Did you then find out that was not your polling place?

A. I say I had probably found that out; that was probably the first inquiry I made, what precinct that was.

Q. How long did you stay there?

A. The better part of the morning; the better part of the day. After ascertaining that my own precinct was only one or two blocks off, I stayed there.

Q. Now, why did you do that; as an interest to the partisan of one ticket?

A. I did not; as a citizen having pride in an honest election.

Q. Was it from your interest in the Republican ticket?

A. From no such unworthy motives.

Q. You were not there in the interest of Mr. Goebel and the Democratic ticket; you were not doing that when you stopped there in the aid of the Democratic ticket?

A. I would have been just as vigilant and just as vehement in my denunciation of an obstruction of a solid Democratic precinct, as at a Republican precinct.

Q. It was not done with any intention to harm Mr. Goebel and the Democratic ticket?

A. No, sir; for no such unworthy motive.

Q. You were not there in that polling place; did you attempt to go in there to ascertain the cause of the delay?

A. I did sir, I went to the door.

Q. Did you not know there was a provision of the law which provided that no one was allowed to go into the polls?

A. Where an election was proceeding; I understand that; but that election was not proceeding.

Q. Do you say to this board that as a Republican inspector in the district where you were born and raised, you stopped there where those men were within 50 feet of the polls, and in violation of the statute you went into the polling place?

A. I did not knowingly violate any statute; I had the permission of the police to step up and find out what was the matter.

Q. You were doing that not as an officer of the election at all, but upon your own motion?

A. As a citizen who believed it his right and duty.

Q. Were you under the impression that the police could authorize you to violate that law when you asked the police if you could go up there, did you understand that?

A. I will say, no, sir.

Q. Then you knew that you were violating the law yourself when you did that?

A. I did not.

Q. Then we will go on. What did you ascertain when you went up to the door; what did the officers say to you; what did you find out?

A. It seems to me they told me they were reading the law; they had a large sheet and I think one of them explained that they were

reading the law; I asked them their names, and I asked them why the vote did not go on. They said in substance, "We are reading the law, and you get away from here."

Q. Did you interfere in that in any way; you made no interference; did you go immediately away?

A. I went across the street.

Q. Did you say anything to them as to their duty?

A. I may have, sir.

Q. What did you say in substance?

A. I do not recollect what I said to them.

Q. In substance?

A. I do not recollect anything I said to them, beyond inquiry as to why the vote did not proceed.

Q. Did you then take your place 50 feet from the polling place?

A. Yes, sir.

Q. How long did you remain there?

A. On that block the better part of the day.

Q. How soon was it before you went back after the warrants?

A. I went to the city hall for those.

Q. How soon after that; after your first visit to the polling place?

A. Events moved pretty rapidly, except the voting; a large crowd opposite quietly watching what was going on. I should say that it was when I was over at the polling place; it was between nine and ten o'clock and Mr. Armstrong and I went to the city hall between twelve and one o'clock.

Q. Now, will you say to this board whether you went with the intention of getting out warrants; was that your purpose in going to the city hall?

A. That was my purpose, sir.

Q. Do you say that you were willing to obstruct that poll at that place, until these officers could be arrested, or could give bond, or perhaps break up that poll by arresting those men—was that your purpose?

A. No, sir.

Q. Then was it your purpose to threaten these men with the warrants of arrest by going, as you suggested a while ago, and getting them out and letting them think they were held in terrorem, and would be served unless they hurried up; was that your purpose?

A. It was my purpose to see if something could not be done legally and properly to expedite the vote.

Q. And that was by a threat of arrest, by first arming yourself with the warrants, and putting them in the hands of an officer, unless you thought the voting was expedited?

A. You misunderstand me. I said if on returning with those warrants, the voting was being conducted with reasonable speed,

I had no desire to persecute anybody, I would keep those warrants in my pocket.

Q. Then were you not seized with the idea that you had the right to run that election?

A. No, sir.

Q. By holding up warrants, or serving them, as you chose?

A. Not the slightest.

Q. And calling out the militia?

A. Not the slightest.

Q. Why did you go to Governor Bradley unless you wanted the militia called out?

A. Under the advice of City Attorney Stone.

Q. Wasn't that for the purpose of getting the militia; was it not your purpose to get a company of militia down there?

A. I stated the advice of Colonel Stone to Governor Bradley.

Q. I asked you as to your purpose; do you understand my question?

Counsel for the contestee interrupting the witness;

And counsel for contestant objects to counsel for contestee interrupting him.

Q. Did you understand the question, Mr. Witness?

A. Please state it again.

Q. I asked you if it wasn't your intention to go to the city hall to get troops to come down there?

A. Not when I went to the city hall, by no means.

Q. Well, when you went to the Governor—excuse me; do you understand the question?

A. I am trying to state just extctly what my motive was—you are asking my motive, are you—my intention?

Q. I will get you—?

A. I conveyed that advice of Mr. City Attorney Stone to Governor Bradley, and laid the case before him, and asked him whether troops should be sent, and it may be—I admit I was interested, as any good citizen would have been, in that state of affairs there, and I may have, very likely did, ask Governor Bradley to send troops down there.

Q. Now, sir, will you say what was your idea as to what that militia should do if Governor Bradley had acceded to your request?

A. I had no idea, except that an election would be held in that precinct.

Q. Was it for the purpose of intimidating those officers?

A. Not the slightest.

Q. Was it for the purpose of compelling them, by the bayonet, to do their duty?

A. No, sir.

Q. Well, you say the precinct was largely Republican and some

three hundred Republicans standing there?

A. Yes, sir.

Q. They didn't need the help or protection of militia, did they?

A. Your question refreshes my mind; I think that Colonel Stone said that if those people were obstructing the vote, as I had stated, and the Governor would remove those people, that the voters in that precinct could elect officers to take the vote. I will not state that—that is my impression.

Q. That is your idea, to remove the legally constituted officers by the bayonet?

A. I will say to you, sir, that I was indignant at the shameful practices there.

Q. Of course you Honest Election people were—that is not the question.

Objected to.

Q. What was your purpose; what were you going to do with the soldiers?

A. I think it has been fully stated, sir.

Q. Then you don't attempt to conceal, that your idea was in doing all of this, to remove those officers by the force of the bayonet, and substitute other men?

A. I think you are moving a little too fast about the bayonet business. I will state that I conveyed the substance of this information to Governor Bradley, and I desired to confer with him as to what was lawful and proper in the premises.

Q. Was it your idea that Governor Bradley was running that election?

A. No, sir.

Q. You were an officer, I believe, of the Legion, were you not?

A. Yes, sir.

Q. Are you now?

A. I have been a member of the Legion.

Q. For how long?

A. Since it left for Puerto Rico, before the war—left for the war.

Q. You didn't go to the war then?

A. No, sir; I offered to go, as General Castleman will testify, insisted on going, and he stated that out of regard for my family, and my business connections, that he thought I ought not to go; other men could better afford to go, and he was swamped with men who wanted to go.

Q. Do you know the politics of Henry L. Stone—he is a Republican now?

A. By general report—yes, sir.

Q. And was then?

A. He was a Democrat in years gone by, I believe, sir.

Re-direct examination by Colonel Breckinridge:

Q. Do you know who the officers were in this precinct, where some ninety or ninety-eight votes were received, out of three hundred?

A. I heard that they had been changed the night before, and that that caused confusion there, and got their names there from the crowd, or from the men themselves.

Q. Do you know who they were; can you now recall who they were?

A. I was given the name of Crites, I think he was sheriff and stood outside, and was said to be connected with a bawdy house in the neighborhood.

Q. C-r-i-t-e-s?

A. That is my information?

Q. Who else?

A. And a man named Jim O'Neill, I think, gave me his name as one of the clerks or judges inside.

Q. And who else?

A. I can't recall—if you mentioned them, I might remember one or two others.

Donald McDonald, being duly sworn and examined by Colonel Breckinridge, deposed as follows:

Q. What is your name?

A. Donald McDonald.

Q. Where do you live?

A. I live at No. 32, St. James Court, Louisville, Kentucky.

Q. What is your occupation?

A. I am a civil engineer by profession, and at present president of the Kentucky Heating Company.

Q. How long have you lived in Louisville?

A. Twenty-six years.

Q. What has been your political affiliation?

A. I have been a Democrat all the time I have been there.

Q. That is a little mixed.

A. I can put it more clearly; I have always voted the straight Democratic ticket, unless there was a person on it that I personally knew was dishonest, or incompetent to perform the duties of the office, and then I scratched it. I voted for Hardin, I voted for Bryan; I voted for Shackleford, and I voted for Goebel, and I supported three out of those men with all the force I had, by speeches, and by contribution of money.

Q. In the late campaign, were you a supporter of Mr. Goebel before the election, as well as a supporter after the election?

A. I voted for Mr. Goebel; I can't say I did more than that.

A. And you voted the whole ticket?

A. I didn't vote the whole ticket; there were a good many names on it I scratched off. Anybody that knows anything about the politics of Louisville would know why I scratched them, but I don't want to say who they were that I scratched off.

Q. You voted the State ticket?

A. I voted the State ticket almost straight.

Q. On that day, will you state to the committee what you saw on election day, what sort of election it was?

A. I went to my own precinct and found everything very orderly, not the least disturbance of any kind. I stayed in line for about twenty minutes and voted. I then got on my bicycle and rode to the gas works, where my business is. I stayed there a short time, and then rode by a good many precincts in the city for the purpose of seeing how the election was going, and got off my wheel at each place, and talked with officer generally—I don't mean the officers of election, I mean the officers of the law, in charge. The election was orderly, and in the white precincts of the city it was very quiet, and apparently fair. When I reached Walnut street, I found that at half past ten o'clock only twenty-nine men had voted; at Green street I found it worse yet, and one of the members there asked me to carry a message to my brother, who was president of the Honest Election League, saying that they were being obstructed there. That was the first time I had ever been in the quarters of the Honest Election League. The way I put it, I said: "What can you do with a slow clerk, whose hand is cold, or pen so bad he can write but four names an hour?" He said, "We are getting that kind of complaints all day, and I don't know what to do." Later in the day David Fairleigh told me—

Objected to.

A. Later in the day I learned they would not admit any inspectors, and that is what influenced my action—.

Objected to.

A. As soon as I received that information I became convinced that there was an organized conspiracy to steal the election, and to count the votes without reference to how they were cast.

Counsel for contestant objects to the last part of the above answer, and asks that it be stricken from the record.

By chairman: The board rules that that part of the answer shall be stricken out.

To which ruling the board of contestee, by counsel, excepts.

Q. (By a committeeman.) Were you present when any inspectors were refused admittance?

A. I was not.

Q. You don't know then that any inspector in the city of Louisville was refused admittance?

A. Yes, sir; I do know that.

Q. How do you know it?

A. I know it the same way I know that the Senate met this morning; I heard so many say it met.

Q. Your only information that inspectors were refused, is what you have heard?

A. It came from Mr. David Farleigh, one of the highest and best citizens in the city of Louisville.

Q. The question I asked you can be answered by "yes" or "no."

A. I didn't see any inspector refused admission. I wasn't in a place where I could have seen it, if it had happened.

Q. The impression that you have formed, with reference to inspectors being refused, is just merely hearsay?

A. No, sir; it is not merely hearsay; it is an absolute certainty. A mere hearsay is something that there may be some doubt about. The fact that the judge of the court found it necessary to issue an injunction commanding that they should be admitted, convinces me that they were going to be refused up to that time.

Q. (Colonel Breckinridge resumes.) After that, what did you see and do after that day?

A. I went and volunteered to serve as a Republican inspector, and go in the toughest precinct in the city of Louisville, if they would give me credentials; I went to that precinct, and found another man had gotten in, which relieved me of a very unpleasant duty. This is the first time I have had anything to say about it since.

Q. Was the same rapidity of voting, and the same apparent fairness shown in the white district of Louisville, as in the colored districts of Louisville, according to what you saw?

A. According to what I saw, it was not. If I am ruled down to only what I saw and heard at first hands, with my own eyes, I don't know anything about it. I saw long lines of negro men standing at the doors, and very few going in the door. At the white precincts I saw small lines of white men, and they were going up more rapidly. I suppose they were voting; I didn't see them voting.

Q. At the Walnut street precinct, what time was it when you were there?

A. Between half past ten and eleven

Q. And how many had voted?

A. Twenty-nine.

Q. At the Green street precinct, what time was it you were there?

A. It was about eleven, but I didn't inquire for figures.

John B. Baskin, being duly sworn and examined by Colonel Breckinridge, deposed as follows:

Q. What is your name?

A. John B. Baskin.

Q. And your profession?

A. Lawyer.

Q. How long have you been a lawyer, Mr. Baskin?

A. Since November, 1876.

Q. How long have you resided in Louisville?

A. Since that time.

Q. Were you in Louisville at the election November 7, 1899?

A. I was, sir.

Q. Were you a member of the Honest Election League?

A. Yes, sir; and a member of the executive committee of that league.

Q. Mr. Baskin, will you just state to these boards, in your judgment, from the conditions that existed before the election, whether the assembling of the military at the armory was, or was not, in the interest of peace?

A. I think it undoubtedly was for the purpose of preserving peace, and I think it had that effect.

Q. Why did you think so, Mr. Baskin?

A. Because of the grave apprehensions in the minds of the people there, that riots would ensue, on account of the bitterness of the campaign. There was very strong opposition to Mr. Goebel, and he, of course, had very strong adherents. The city administration was on the side of Mr. Goebel, and the people there believed that the city administration would use the fire department and the police to carry the election by means that they did not recognize as lawful, and the excitement was very intense, and the apprehension very grave, and on that account, aggravated, I think, by the proclamation of the mayor—for these reasons I think the presence of the military in the armory was a very wise precaution, because the same thing has been done there for twenty years at every election. General Castleman told me after this election, that there had been no time in twenty years that he didn't have troops on election day at the armory in case of an emergency, in case any riot ensued.

Q. What sort of an election was it, as to quiet or good order?

A. As is usually the case when people expect a riot, they don't have it; it was a very quiet election, comparatively; there were fewer arrests on that day than any election day I have ever known.

Q. Were you about the polls on election day in the city of Louisville?

A. Yes, sir; I went to the 24th precinct of the tenth ward; that is on West and Green, the one about which Mr. Huhlein testified, as a representative of the Honest Election League, and I spent the day there, with one or two intervals; and after that I was admitted to the polls as a Republican inspector, and I stayed there until the vote was counted, and the ballot box delivered to a policeman with one of the officers, and then taken up to headquarters.

Q. What was the rapidity with which the voting was permitted at the poll, Mr. Baskin?

A. It was unusually slow. I learned after the registration, I don't think my memory is wrong about the figures, that there were thirty-one whites registered there; and 261 colored. I was at the polls before they were opened; the location of that precinct had been

given in the paper as on Walnut street near West. I got there about a quarter before seven, and learned that it had been changed during the night one square further up West street, making it on Green near West. I drove up there in my buggy.

Q. Do you know by what authority it was changed, or how it happened to be changed?

A. No, sir; I don't know. Of course, I surmise, but that is not evidence. I drove up there and found a man who acted as sheriff—William F. Crites. I found a man whose name was H. H. Mullen, and a man followed us from Walnut and West up to Green and West by the name of James J. O'Neil; he was one of the officers substituted the night before, out of the celebrated 87th precinct for the clerk named Masterson, who had been removed, and he performed the duties of clerk there that day. Another man followed, named R. T. Anderson; he was a colored man that acted as judge. When I got there I saw Crites standing there, and I told him this man Anderson had his credentials, which Anderson exhibited, and asked him why he hadn't opened the polls, as the two judges, and the sheriff and clerk were all there; and he gave me no satisfactory answers—I don't remember what it was—"I am attending to this," or something of that nature, and I told him that it was his duty to open the polls, that the hour had arrived; and he said, "Well, we don't want Anderson in here; we are going to appoint somebody in his place." "Well," I said, "It is not half past seven anyway, you could not fill a vacancy until half past seven under the law, and the judge is here with his credentials, and you must admit him." He said, "I won't do it." I then appealed to Mullen, the Democratic judge; this fellow Crites was the sheriff, and made Anderson exhibit his credentials to him, and they both refused to let Anderson in there to act as judge. I told them if they didn't do it, that I would have them arrested. "Well," they said, "go ahead." Upon that Mr. Johnnie Armstrong and myself got on the street car and went up to the city hall and took out warrants for those two men, and I told the clerk if he would give the warrants to me I would hand them to the policeman at the precinct. He did that, and I took them down there and gave them to the policeman, and instead of going over and executing the warrants promptly as I demanded he should do, he went and telephoned to the city hall; I want to do him the justice to say that he claimed he went there to telephone for the patrol wagon, and pretty soon, before any patrol wagon came, a deputy bond commissioner came down and went into the precinct and took the bonds without carrying the men away from the polls at all. I suppose it was about a quarter past eight when that was done. I then called Anderson again, this Republican judge, and said, "Now, this man is going to make a second demand to be admitted in this precinct, in order that the polls may be opened." They still declined, and I said, "If you don't do it, I will take out a second warrant for you,

and this time I will endeavor to keep the bond commissioner from coming down here, but will take you up to the city hall and let you give bond up there." They declined to do it. Armstrong and I went up to the city hall, and warrants were given to me as before, and I delivered them to the policeman, and in the meantime another policeman had come. They went over and telephoned—one went over and arrested the men, kept them in his custody, and the other one went to the telephone, I presume; he went somewhere, and the patrol wagon was brought down, and these men were carried away in the patrol wagon. It is about half a mile from that precinct to the city hall, and they returned very rapidly; they were not gone over ten or twelve minutes. Of course, I can not state what occurred there at the city hall, but they were back in ten or twelve minutes, and pretty soon they concluded to open the polls; that was just half past nine, and it was ten o'clock before any voter was admitted. The fifty foot line was very rigidly enforced there, and, of course, everybody had to respect it; and I halloed across to Crites, the sheriff, standing on the outside, "Why don't they receive voters?" He answered, "They are reading the instructions." It took them thirty minutes after going in there to read those instructions, to admit the first voter; the first voter got in there about ten o'clock. There were two lines of colored men, each line being kept, however, fifty feet from the entrance of the precinct. The votes were put in very, very slowly. They would call in two men at a time; they had two booths in there. Mr. Armstrong, who was with me, went off and got two extra booths, and brought them there, and put them on the sidewalk, and set them up, and asked them to take them in in order to facilitate the voting. They declined to take these two booths in, and they remained on the outside during the whole day; but there were two inside. Now, with those two booths, I counted, and if they took in two men, one for each booth, during the whole time of the election from ten o'clock, when the first votes were voted, until four o'clock, when the polls closed, each booth received fifty votes, just one hundred votes in the two. The lines were continuously there all the time, and, of course, the crowd was jeering and demanding that they should receive voters more rapidly, but it did no good. Once during the time between ten o'clock and four o'clock, they closed the polls for twenty-five minutes. I halloed across to Crites and asked, "Why don't you let the voters come in?" He said, "The officers are voting." It took them just twenty-five minutes to vote themselves; four officers.

Q. (By Governor Bradley.) When was that?

A. That was about one o'clock—along about one o'clock. I take it for granted that they voted; Crites said they closed the polls so the officers could vote. The polls were closed exactly twenty-five minutes. About a quarter to four o'clock it seems the officers in authority feared trouble; they sent some extra police-

men down there in charge of Lieutenant Reilly. I went to Reilly and told him I had credentials from the Republican party, signed by Alf Davis, chairman, and also a copy of Judge Toney's injunction demanding the officers to admit me as an inspector. I told him also Henry M. Flexner who was with me, had credentials from the Brown party, and exhibited those to the officers, and he also had a copy of Judge Toney's injunction in relation to the admission of Brown inspectors. I told him we wanted to go in there at four o'clock, and he said, "Well, a minute or so before time you two gentlemen may come over, and we went over at four o'clock, and Crites said we should not come in—Crites was the sheriff; Mullen poked his nose to the door—it was a wooden panel door, with glass above—it was a little store they were using for that purpose—there was a broken panel in it, and Mr. Flexner and I passed in our credentials, as well as the copies of Judge Toney's injunction, to Mr. Mullen, the judge—Crites had already seen them. We gave them to him, and he said, "I have seen those things already." We then passed them in to Mullen, the judge, and we demanded that we should be admitted for the purpose of inspecting that count, and he refused admittance. I hung on there, and told him in a very determined way I was coming in, and once, when he first refused me, I beckoned across the street to four or five gentlemen who were there to come over, and it was my purpose, if I could do so, without a riot, to get in that poll. I believed that by a little determination, and by standing firmly, that they would admit me. Of course, I am not the character of man who would seek a riot with a hoodlum, and was going just as far as I could without having a riot; and Bob Kinkead happened to be along there about that time, and he said, "You stay here, and don't have any disturbance, I will go and see Judge Toney and Haager, and see if they can't get you in there." Just about twenty minutes after the polls closed, the count hadn't begun; Crites, the sheriff, stood outside most of the time, and I stood down on the door step, Mr. Flexner probably standing by, the other inspector. They admitted us just at that hour. We went in and the vote was counted without the slightest disturbance, without the slightest misunderstanding. There wasn't a single difference of appearance; out of the hundred votes, one of them, the voter had evidently voted for both tickets; that, of course, neutralized his vote, and it was rejected; everybody agreed to it as proper. There were four other votes that were seemingly doubtful. I remarked to them, "I think those are good votes, but put them in the box and let the county board determine." and they all said that was the right thing to do, and they put them into the box, and the votes were tabulated and counted, and I think Mr. Taylor got 84 and Mr. Goebel 13. They were duly certified, and copies of the returns made, and the book and credentials all put in a bag that was provided for the purpose by the authorities; and when the door was opened a policeman was

there, and said he had orders to follow that vote. I proposed to the election officer to put the box in my buggy, and I would take him uptown, but a street car came along, and he said, "No, we will take this car," and they carried it up to the Louisville Trust Company building, and put it in a vault, and I got in my buggy and my negro man drove me up in the buggy.

Q. According to your knowledge, what you heard before the day of election, was the proclamation of Mr. Weaver received by you, and so far as you know, by any others of the city of Louisville, as a pledge of keeping order, or as an intimidation and threat?

A. Why, Colonel Breckinridge, I don't think there was a man, woman or child in the city of Louisville that thought Weaver was sincere in that proclamation. We thought it was just an effort to allay the suspicion of the various parties who might go to the polls for the purpose of insisting on a fair election.

Q. Did you see any interference on that day by and Federal marshal?

A. No, sir; none whatever. There wasn't any interference. I was at that one precinct only. There was no interference there, only the slow way in which that vote was received. I didn't see a soldier during that whole day.

Judge Yost resumed the direct examination as follows:

Q. Are you acquainted with the clerk in the precinct in which you acted as inspector?

A. James J. O'Neill, yes sir; I met him that day and inquired who he was.

Q. How long had you known him?

A. I never saw him before. I knew his brother very well, who his brother was. He was a deputy clerk for a good many years in the chancery court.

Q. Who is James J. O'Neill?

A. I understand he is an attache of a house of prostitution, and his appearance would corroborate that too.

Q. Do you know anything about his ability as a penman?

A. Yes, sir; he seemed to be a pretty rapid penman; very competent as a penman, wrote very rapidly. I only saw him there.

Q. You say he is a rapid penman when he tries?

A. Yes, sir. I only saw him on that occasion. He certainly wrote with great facility then.

Q. I will ask you what your politics are, with what party you affiliate now and with what party you have been affiliating in the past?

A. I was born and raised a Democrat. In 1896 I affiliated with the Palmer and Buckner wing of the party because I could not endorse the Chicago platform.

Q. Mr. Phelps and I endorsed you on that.

A. And Brother Kohn, I think, voted for me when I was a can-

didate for Congress on the Palmer and Buckner ticket. In 1897 the city of Louisville, the Democratic local ticket there; when the Goebel bill was passed—that drove me out of the party as it has done thousands of others; it looks to me like it has driven the State into the Republican lists they way it is going on—.

Cross-examination by Mr. Kohn:

Q. When was it you say you changed from a Democrat to a Republican?

A. Since the Goebel bill I quit affiliating with any branch of the Democratic party.

Q. You then registered as a Republican?

A. Yes, sir; this last time for the first time.

Q. You, I believe, say you were a Republican inspector?

A. Yes, sir.

Q. At this precinct; now when was it that you became a Republican?

A. Well, I suppose from the time of the registration in October.

Q. Last October?

A. Yes, sir.

Q. Not Republican before that?

A. No, sir.

Q. You hold, I believe, a Federal office?

A. Yes, sir.

Q. Under the appointment of Judge Barr, I believe, originally?

A. Yes, sir; but I was appointed as a Democrat, and it was so stated by Judge Barr when the appointment was made.

Q. You still hold it under Judge Evans?

A. Yes, sir.

Q. You have practiced law for a great many years in the city of Louisville?

A. Yes, sir; twenty-two or twenty-three years.

Q. I will ask you in all your experience until this last election you ever heard of a judge of the Federal court in a State election charging his grand jury upon the subject of State election?

A. I never did.

Q. About to be had?

A. I never did.

Q. I will ask you if you ever before knew of any court charging a grand jury upon a statute, citing a statute a part of what has been repealed by a special enactment?

A. Of course, I never heard of such a thing.

Q. Don't you know that 5507 under which this charge was based of Judge Evans has been expressly repealed by Congress?

A. I don't remember it by the numbers. If I could see the statute I think I could remember which were repealed, but understand I want to be perfectly fair about that. I understand that Judge Evans has charged.

Objected to; objection sustained.

Q. I will ask you if ever knew of a judge just prior to an election, any judge charging his grand jury and then adjourning that same grand jury over until after the election with the express purpose of considering what occurred at that election?

A. I don't think I ever heard of such a thing.

Q. You have spoken about Mr. O'Neill. Is he a brother of John O'Neill, the real estate agent, in Louisville?

A. James J. O'Neill, who was clerk, told me during the count that he was a brother of John M. O'Neill, the real estate agent.

Q. You have stated that you understood he was an attache of a house of prostitution?

A. Yes, sir.

Q. Who told you that?

A. I don't recall it; some one told me that down there during the election.

Q. Do you think it is fair to state —to make that statement upon hearsay—do you know anything against Mr. O'Neill yourself?

A. Personally, I don't know anything about the man.

Q. Give us the name of the man that told you that he was the attache of a whore-house?

A. I can't recall that now.

Q. Give us the name of the house?

A. I can't recall that either.

Q. Did you ever see him in one?

A. No, sir.

Q. You don't know that he was ever in one?

A. No, sir.

Q. And yet you upon information, given by some one, you don't know, or can not name, you denounce that man as attache of a house of prostitution?

A. No, I don't denounce him at all. I was asked about his character. Character is a matter you gain from information. I gave you the information I had. Character is always obtained as a matter of information.

Q. But information obtained from some various persons. You talked to only one person about it?

A. I don't remember now. I heard it remarked down there that he was an attache.

Q. Just on that day. You had never seen him before?

A. I never heard of him before.

Q. Never had heard or him or seen him before?

A. No, sir.

Q. He was a brother of John M. O'Neill, who is certainly a reputable man?

A. Perfectly so.

Q. Just upon the statement of some one man whose name you now forget, you say he was an attache of a house of prostitution?

A. I don't say he was. I heard that—I did hear that. I don't

make that as a charge, and I didn't purpose to make it as a charge. I heard it spoken of around the polls there. But the fact is easily asertained. You can bring him up and ascertain it.

Q. We will ascertain it the proper way. As to the matter about the militia, when was the first time you knew the militia were to be brought into Louisville for this election—when was the first information you had upon the subject?

A. I think I heard a day or two before the election that the militia would probably be out in the armory. I heard rumors to that effect.

Q. Did you see in the newspapers the statement that the militia had been ordered there and the gatling gun—

Objected to.

Q. I will ask you if in the Dispatch of Monday morning, and in the Post of Saturday afternoon, prior to the election, you didn't see the statement that Governor Bradley would be in Louisville on election day himself, that he had ordered the militia here, that he would be in charge himself, that the gatling guns would arrive on Monday at noon, and in the afternoon paper of Monday that they had arrived?

A. I saw some of those statements in the paper, or else some one told me. I had heard the facts some way or another substantially as you stated, but I never heard, of course, that Governor Bradley would be in charge.

Q. What do you mean by in charge?

A. I mean that he would be commander-in-chief. Heard that he would be in the city that evening, as far as I remember having heard. I might have heard the other, but I don't recollect it.

Q. Did you see Governor Bradley on the Sunday before the election?

A. No, sir.

Q. Or on Monday?

A. No, sir.

Q. You had no conversation with him then about the matter?

A. Let's see? Wait a minute. I believe on Sunday, I don't know whether it was Sunday before the election or not, I went to the Galt House and went into Governor Bradley's office, and Mr. George Denny—I mean his room at the Galt House—George Denny of Lexington was in there and I sent up my card and went in and just said, "Governor, I came in merely to shake hands with you and pay my respects," but I had no conversation, except casual remarks.

Q. But the Governor was at the Galt House in Louisville that Sunday afternoon?

A. I think it was the day before the election—the Sunday before the election.

Q. That was the day that George Denny made his speech?

A. That was Sunday, I think it was Sunday afternoon I called there.

Q. That was the first time you had seen the Governor in Louisville relative to this matter?

A. Yes, sir. I suppose you refer to a previous meeting. I understand some witnesses said I was at a meeting previously at the Galt House. There is a mistake about that. I was not there.

Q. I don't know of any witness that said that.

A. Some one told me that a witness said that.

Q. Were you at any meeting at the Galt House?

A. Before the election.

Q. Since the election?

A. Once.

Q. Were you at the meeting last Friday night that was held at the Galt House?

A. No, sir.

Q. Or at any time during the last week?

A. No, sir.

Q. Who was at the meeting at the Galt House when you were present?

A. I was at a meeting about—before the Legislature met sometime in December. Let's see who was there. J. T. O'Neal, four or five. Mr. Long, the ex-treasurer, I believe he was; Governor Bradley, I think; Mr. Helm was there and Mr. Tom Landrum; since the election that was.

Q. Before the election, were you at any meeting?

A. None whatever.

A. Any meeting with any gentlemen concerning the election?

A. No, sir; no meeting whatever.

Q. You were a member of the executive committee of the Honest Election League?

A. Yes, sir.

Q. Did you have a meeting with any of those men — did you have any meeting where it was agreed that they should have squads of men to go to the polls armed?

A. No, sir.

Q. You know of nothing of that sort?

A. I know it didn't occur, because I was at the Honest Election League meetings. It could not have occurred.

Q. Do you know of their raising money to spend in that election?

A. Not one cent was ever raised to use for that purpose.

Q. Don't you know that money was spent on the day of the election — given out from the headquarters, room 405 Equitable Building?

A. The Honest Election League had nothing to do with room 405.

Q. Didn't Mr. Wallace have charge of that room?

A. I don't know what Mr. Wallace had charge of. I know the Honest Election League had no connection with that room.

Q. Can you tell us how much money was raised by the Honest Election League for the purposes of the election or for any purposes?

A. All its expenses. I don't think over three thousand dollars was ever raised before and since the election.

Q. How many branch offices did the Honest Election League have?

A. There are twelve wards in the city. I think they had eight or nine, maybe ten.

Q. There was one on the corner of Nineteenth and Magazine, was there not?

A. I don't know where those are. There was one in each ward. I believe in the lower ward their idea was to have two, because the ward is so large.

Q. I will ask you to state whether or not it is true that in a great many of those they were in charge of the agents and employes of the L. & N. Railroad Co.?

A. If that is true, I never heard of it. I know this, that as I remember it, I voted for and a resolution was carried to employ men to take charge of the headquarters—the branch headquarters. Whether those men had any connection whatever with the L. & N. road, I can't say, but certainly they were not to my knowledge.

Q. Who selected those men?

A. Some were elected by the secretary, Mr. Brooks Johnson, and Mr. James McGill. I think he is at the head of some workingmen's organization. He is also a member of some executive committee.

Q. He lives in the first ward?

A. Up town somewhere.

Q. I will ask you if there was one on the corner of Eleventh and Broadway?

A. I don't know the location of a single one, except the ones in the seventh and eighth wards, which were held in the general headquarters.

Q. Weren't these other special ones, one at Frank Dugan's saloon?

A. I don't know the location of a single one.

Q. One at Nineteenth and Magazine, another saloon?

A. I don't know any of them. There is no use asking me specifically about them.

Q. Do you know that each one of those branch offices of the Honest Election League existing in each ward was provided with a telephone?

A. My opinion was that we tried to arrange for telephones and the telephone company could not furnish them.

Q. Isn't it a fact that the telephone line from all those offices

was line 319, and that they all connected with the Buckingham Theatre?

A. If there is a word of truth in that I don't know it, and I don't believe there is any word of truth in it, and I don't see how I could have failed to have known it.

Q. Who made the arrangements about the telephones?

A. We instructed Mr. Brooks Johnson, our acting secretary.

Q. Mr. Brooks Johnson?

A. We instructed him to do it, but I don't think he succeeded to get any telephones for these branch offices.

Q. In whose office is he?

A. He was working for the Honest Election League. What he has done hitherto I don't know.

Q. What is his business?

A. I don't know whether he is a newspaper man or whether he was connected with an agricultural house. I don't know which.

Q. The Honest Election League also had Jerry Featherstone in their employ as one of the workers of the Honest Election League?

A. I never heard of him. He is a new man to me. He may have been in the employ without my knowledge.

Q. Have Frank Dugan in their employ?

A. Never heard of him until I saw it mentioned in this case. Yes, I did, too; if that is the same man that figured in some arrests down there about the registration, then I heard of him in that way, but I don't know him.

Q. Was he employed by—the man that you say figured in an arrest—he was employed by the—no—

A. Not that I know of.

Q. Honest Election League?

A. He may have been, but I never heard of it. I don't undertake to tell you who were the parties employed by the Honest Election League to take charge of these particular sub-headquarters, because I don't know any of them. I only know that we authorized it by resolution of our committee.

Q. Who was the president of that Honest Election League?

A. Kenneth McDonald, an architect.

Q. Who was the secretary?

A. Arthur Wallace was the chief secretary, but not the acting one. He did not attend to the duties. Brooks Johnson attended to the duties.

Q. Who was the treasurer?

A. John W. Barr, Jr., and Gus McDonald was assistant secretary.

Q. Did Mr. Guerrant have anything to do with it?

A. I never heard of such a man.

Q. Do you know of any sum of money having been distributed

on the Saturday before the election and on the Monday before the election in the Equitable Building in the city of Louisville?

A. No, sir; I do not. I know that no such money was distributed by order of the executive committee of the Honest Election League. They never distributed one cent for any such purpose.

Q. You don't know whether it was distributed there or not?

A. No, sir. I know that the Honest Election League had no connection with any office in the Equitable building.

Q. It was an open secret and true that what was known as the Brown Democrats and the Republicans had joined hands for the purpose of attempting to defeat the regular ticket?

A. I think that was pretty well understood, that the Brown people realized that they could not be elected, and they would make the fight—

Q. In the interest of Taylor?

A. In the interest of Taylor. There is no use concealing that fact.

Q. As a fact you went there as inspector for Republican party and Mr. Flexner as an inspector for the Brown party?

A. Yes, sir.

Q. That is the way it was worked all over the city?

A. When you ask me that, I don't know anything about that except that one precinct.

Q. That is the way it was in that precinct?

A. Yes, sir.

Q. You have stated here that the militia were in Louisville at other elections?

A. I stated that Gen. Castleman told me since the election that during his entire connection with the Louisville Legion—twenty years—there had never been an election but what there was militia in the armory ready for an emergency if an emergency required it.

Q. Did he say to you just as swore before this commission that there never was a time that he didn't ask for a guard at the armory to guard the state property?

A. No, sir.

Q. But that at no time would he allow a publication to be made or notice to be given of any military being at Louisville on election day, or allow them to go upon the streets at all under any circumstances on election day?

A. He never stated anything to me one way or the other in that line.

Q. You have no personal knowledge on the subject, have you?

A. No, I never saw the militia on election day, that I recall, at any election, though I always knew from public information, that the militia were always in the armory. In 1897, on Broadway, there were some fears of a riot, and the papers mentioned the militia on that occasion—

Q. Isn't it a fact that Major Castleman at that time refused to let the militia go on the street?

A. My information is they didn't turn out, and General Castleman spoke to me about it. He said he didn't turn them out then because there was no authority to turn them out, or had no orders, or no necessity.

Q. Did you know of the whole Legion being at the armory on election day in the city of Louisville?

A. As I stated, I don't know.

Q. But you saw no men?

A. I have no opinion one way or the other. I only tell you what General Castleman mentioned. I don't think he said he had the whole Legion out; he said he had troops at the armory. He never stated how many, beause I don't want to do General Castleman any injustice.

Q. Did you ever before know of Gatling guns being shipped to Louisville just on the day preceding an election, and publication made of the fact that they had arrived in the city, to be handy for election day purposes?

A. No, I never heard about that. Remember we never had a situation before like we had this last time.

Q. Don't you know there was more excitement in other elections of your own knowledge, in the Jacob and Baxter race, ten to one, than there was in this last election?

A. I will ask you to speak for yourself on that. That was before my time.

Q. In other races then, in the race of 1897, wasn't there a great deal more talk than in this?

A. No, sir; nothing like it. If you will permit I will tell you why there was more excitement in this last one than the one before. I will try to do it fairly.

Q. You can give that after a while. I will ask you to state whether or not it is true there was a meeting called under the auspices of the Citizens' League, or perhaps Honest Election League claiming to be non-partisan at the Board of Trade meeting hall before the election?

A. There was a meeting called by some citizens. The meeting was called of citizens, of non-partisan citizens, and to that meeting the mayor, the chief of police, the sheriff and the members of the board of public safety and the members of the election commission were invited. The purpose of that meeting was to influence those officers of the law, to induce them to use their power and their power and their influence to secure a perfectly fair election, irrespective of party.

Q. You were present at that meeting?

A. I was present and I offered the resolutions there that were adopted.

Q. I will ask you if at that meeting Mayor Weaver did not

appear and did not state publicly to the meeting, that he intended, so far as he was concerned, and pledged his word to that effect, that he would give the citizens of Louisville an honest, a fair election and see to it that there would be no interference on the part of the police or firemen, or any one else, and that there should be an honest and a fair count, that Mr. W. S. Lyons, a member of the board of safety, Mr. Suter of the board of safety, Mr. Tierney of the board of safety, Mr. Henry Bell, the sheriff, did not make similar statements and pledges to that meeting?

A. Yes, sir; every one of them did and the meeting did not accept them as sincere.

Q. Why did they invite them there then?

A. Because they thought that those gentlemen could be confronted by four or five hundred of the best citizens of Louisville, among the best, I don't mean all the best, but those that were there were gentlemen and men of character and law abiding—they thought if those officers would see the character of the men that were anxious for a fair election it would have some influence on them to induce them to use their power for the purpose of a fair election and prevent disorders.

Q. They made those pledges?

A. Yes, sir.

Q. Did you or anyone else that you know of ever go to the mayor or any of these gentlement afterwards to ask them whether they intended—had changed their minds and did not intend to comply with their pledges?

A. No, I am not in the habit of going to a man and asking him whether he lied or not.

Q. Could they have promised more than they had promised?

A. Their promises were very vociferous. As some one remarked sitting by, perhaps, protested too much.

Q. How long have you known Henry Bell?

A. I have known Henry Bell years.

Q. Is he not a man of very high reputation for honor and integrity?

A. You mean personally?

Q. Any way? A man that won't lie or take an advantage of another?

A. Personally Henry Bell is a very fine character, but Henry Bell is regarded as a very extreme partisan in politics.

Q. So are you regarded as an extreme partisan?

A. I don't think I am as extreme as Henry is.

Q. So is Governor Bradley?

A. I think we are all partisans, but not to the extent Henry is.

Q. Do you mean to say Henry Bell is a greater partisan than the gentlemen I have mentioned?

A. I don't see how I could be chairman and sheriff of the cam-

paign committee, because I might have to perform duties inconsistent.

Q. Could the Governor consistently be the chairman of the Republican State central committee and call out the militia, and make speeches for his party, for the purpose of having an honest election on election day?

A. When you ask me if I could be Governor and be chairman of the campaign committee I would say undoubtedly no. If you would ask me if I were Governor and I thought the militia ought to be called out, if I were execrated the rest of my days for it, because I would conceive it my duty.

Q. Do you know Mr. Lyon?

A. Yes, sir.

Q. How long have you known him?

A. Twenty years or more.

Q. Isn't he a man of high character?

A. Personally he is.

Q. All of these gentlemen—were they not men of high character?

A. You mean they were? I say that Mr. Lyons—he is to-day a personal friend—Mr. Lyons' conduct in this last campaign has made him lose his high character in the city of Louisville, because of his conduct as an officer.

Q. Because he was not on your side of the house?

A. No, sir; not that at all.

Q. State one act he did that was wrong?

A. I will tell you one act—I believe it is admitted that Mr. Lyons and Mr. Suter refused to prohibit the firemen from going to the polls on election day except for the purpose of voting, and that was the resolution offered by Mr. Tierney.

Q. Were you there?

A. No, sir; but that is not disputed.

Q. Who says it is not disputed?

A. Mr. Lyons pledged himself not to permit the police department or the fire department to be used for partisan purposes. Mr. Lyons did permit the police department and the fire department to be used by refusing to keep those men from electioneering on election day. He refused to keep them at their post of duty.

Q. Don't you know that the same resolutions that were passed and rules that were passed relative to the firemen at this last election were the rules that had been passed at every election prior to that time as long as the board of safety has been in existence?

A. I never investigated that; I don't know.

Q. You say the election was extremely quiet?

A. During the day, yes, so far as I saw. I didn't see every place in town.

Q. You know of any policeman that violated his duty?

A. No, sir; I can't say I do. I don't believe I do.

Q. At this poll that you speak of, twenty-fourth precinct of the tenth ward—was not your ward?

A. No, sir.

Q. Not your precinct?

A. No, sir.

Q. It was what they call the colored district?

A. Yes, sir; 261 colored and 31 whites was about the size of it.

Q. You say that there you got in about twenty minutes after the polls closed?

A. Yes, sir.

Q. There was an honest count; fair count?

A. Yes, sir. I have no complaint to make of the count, and honest certificate of it, too.

Q. It was all proper, so far as you know?

A. Oh, yes, I am satisfied it was honest.

Q. Now, then, who went in there with you?

A. Henry M. Flexner, the inspector.

Q. He went in as a Brown inspector?

A. Yes, sir.

Q. Under the order of the chancery court—of the law and equity court?

A. I don't know whether they let him in under that order, or under his credentials.

Q. I understood you to say in your direct-examination that he had the order and the credentials both—that you said to the officer in charge, I have my credentials and Mr. Flexner has his, and also I have a copy of the order of the judge of the law and equity court?

A. That is right. He did present his; I had credentials; he had a copy of the order and I had a copy of the order, and both were accepted.

Q. Mr. Flexner was in that precinct under the credentials given him by the Brown people?

A. Certainly, or the order of Judge Toney, or both, I don't know which.

Q. And he was present at the count from beginning to end?

A. Yes, sir. We kept a check on it, and it agreed with the others, and they certified it.

Q. Where did you get that order from of Judge Toney's on that day?

A. Well, now, I don't remember who handed it to me. I asked for it somewhere, but I don't remember of whom I got it.

Q. Where did you get those two booths that you put there in front—

A. I didn't get those; I stated in my direct-examination that John A. Armstrong got them.

Q. Do you know where he got them from?

A. I take it for granted he got them at the Galt House. And I saw him bring them there.

Q. And booths taken from the court house, and so far as you know were taken and brought there and put on the sidewalk?

A. Yes, sir; offered to the officers.

Q. How many deputy sheriffs has Mr. Bell in Louisville?

A. I don't know.

Q. A large number, 17 or 18?

A. I don't know, I suppose somewhere along there.

Q. You know those deputy sheriffs?

A. Most of them I might know

Q. I want to ask you who it was that served this process of Judge Toney?

A. I haven't the most remote idea.

Q. How many did you have?

A. I had one copy.

Q. Do you know who gave that to you?

A. No, sir; I don't remember. Some fellow had it. He had a copy, and I asked him for it. I told him I might need it to get in?

Q. You didn't have the copy directed to Mr. Flexner?

A. I don't know where Flexner got his copy.

Q. He had a copy?

A. He had a copy of Judge Toney's order in the case of John Young Brown, and I had a copy in the case of Marshall.

Q. You don't know where he got his copy?

A. I think somebody brought them down there, and handed one to him and one to me.

Q. Can't you state who it was?

A. No, sir.

Q. Is it not true that the Republicans and Brown men in large numbers went around through the city, and went to that precinct where you were with a bunch of those orders, and delivered them around promiscuously?

A. I never saw any such bunch. I tell you who I think I got mine from. I think Bob Kinkead had it and gave it to me.

Q. Where did you see Kinkead to give it to you?

A. I didn't see Kinkead get it from anywhere.

Q. Where did Kinkead give it to you?

A. Down at the precinct.

Q. Who came down to that precinct, who else was at this precinct?

A. I have got a whole list of gentlemen that were there. John A. Armstrong, Henry M. Flexner, Herbert Mengel, Philip S. Campbell, Jr., John R. Watts, his two brothers, Benjamin D. and W. W. Watts, Donald Macpherson, S. Y. Rodman, F. W. Hudson, R. C. Kinkead, Marion E. Taylor; General Duke passed there several times during the day, and the Reverend Mr. Markiss, I don't

know his initials, but he is a teacher in the Presbyterian seminary; W, R. Toomey, I believe that is all I have a memorandum of. Ross Todd was there.

Q. Didn't they all have copies of this order of injunction?

A. I don't know.

Q. Was Mr. Kinkead a sheriff or a deputy sheriff?

A. Mr. Kinkead was an active candidate, and of course he wanted to get the Republican inspectors in.

Q. What authority did he have for delivering this paper?

A. I don't think he was appointed special bailiff.

Q. He just took the right to do it?

A. He gave me the copy.

Q. He was a candidate at this election?

A. Yes, sir; as Park Commissioner.

Q. And an active partisan and Republican?

A. Yes, sir.

Q. I will ask you if you know of any meeting held at the office of Mr. Helm—if you were present at any meeting there?

A. None whatever.

Q. Nor at at any other place except what you have stated?

A. Nor have I ever heard of one.

Q. I understood you were not present at any other meeting except what you have stated now?

A. None whatever except the Honest Election League. That was only the committee. The league never met. The committee had meetings and attended to everything.

Q. Do you know the name of the coal agent for the L. & N. Railroad Company, who attends to the coal department?

A. No—Culp—Culp is dead; I don't know his name.

Q. I believe you stated you didn't know the name of these men that had charge of these polls?

A. Not one of them.

Q. Various precincts in the city—

Cross examination (continued) by Mr. Ollie James:

Q. In this precinct in which you were an inspector, was there any whisky in that precinct on that day when you went in there as an inspector?

A. I know what you are after, I am perfectly willing to tell you.

Q. Did you take any whiskey in there?

A. No, sir. I will tell you how it occurred, if you like, although that is a complete answer to your question. Just before the election closed, a friend of mine passed by there and said to me, "I have got a flask of whisky in my pocket, would you like to have it?" I said to him, "Why, yes, give it to me and I will put it in my buggy." I put it in my buggy, and then went in the polls as inspector at 4:20, as I have stated. After being in there a little while, some one said, "I am mighty dry, I would like to have a drink." I think it was Mullen,

one of the sheriffs. I said, "Gentlemen, I have got a flask in my buggy if you will send out and get it, you are welcome to it. A man named Locke, I think, went out and got it and brought it in. It was a small glass bottle, flat shape, would hold about a half pint. They brought that flask in there, took the cork out, and passed it to me first, and I took a little drink of it, and it was passed all around, and everybody in there took a little of that whisky, except a colored man by the name of Anderson, and Anderson complained afterwards that he had been forgotten, and I remember that I gave him fifteen cents to go off and get a drink when the count was completed. We had been there about an hour, and Mullen, I suppose, thought that I was something easy, and I was perfectly willing to be considered easy because I wanted to get along harmoniously in that tough neighborhood. Mullen said, "Can't you stand another drink?" I said, "Oh, yes, send out and get it, I will pay for it," and Locke, the same man, the second time, I know Locke got it, and brought in another bottle. I turned it over to Mullen and I never saw any more of it, and I know that no one got any of it while we were in there except Mullen, the sheriff, the Democratic sheriff.

Q. This man that gave you the whisky, was he a distributing agent of whisky for the Honest Election League of the city of Louisville?

A. No, sir, he is a close, intimate friend of mine, that happened to be passing there.

Q. Most intimate friend?

A. Yes, sir.

Q. You were there as a representative of the Honest Election League, and sent out and got some whisky and gave to the officers whilst the count was going on?

A. I have stated the facts; you can draw your own conclusions about it.

Q. You think that count is correct?

A. There is no doubt about it. Any one of these fellows I think could have taken that whole bottle without being affected. I can state most positively that there was not a man in that booth in the slightest degree under the influence of liquor. That first bottle went around once. There was probably a spoonful left in the bottle. It didn't go around once. It excluded the colored man. There were about six or seven men in there. You can tell whether a half pint of whisky will make seven men drunk or not, and the second time nobody got any of that whisky except Mullen; the bottle was passed to him, and I don't know whether he took any drink out of it I doubt if he did; he may have done so, but nobody else got any of it.

Q. Why didn't you, being a representative of the Honest Election sentiment in the city of Louisville—why didn't you say to this officer when he inquired for a drink, say to him, "No, sir, you oughtn't to have whisky in the polls, I am representing the Honest

Election League. I want that count made correctly and fairly without any whisky?"

A. I never have been taught that in Kentucky there is any particular disgrace in giving a tired man a drink of whisky; and there were about seven of the tiredest men you ever saw there. It never occurred to me one way or the other that I was doing the slightest moral wrong. I didn't give that whisky as a representative of anybody. I simply did it because they wanted a drink, and I wanted one myself. I hadn't had one during the day, and I was awfully tired, being on my feet from half-past six in the morning.

Q. In answer to your question, I would add that I never knew it to be the rule in Kentucky that an Honest Election League took whisky into the booth and distributed it amongst the officers, either?

A. You never heard of an Honest Election League before, I reckon.

Q. I never did, and I don't want to hear of any more like this.

A. I have no doubt you don't want to hear any more of it because it is a thorn in the side of your party in Louisville?

Q. I never heard of an Honest Election League where it was used as a cloak by Republicans in order to try to promote their own interest under that disguise, either.

A. In this instance, that is not true. I have got here the constitution of the Honest Election League.

Q. I don't care anything about any rules you have got in the Honest Election League.

A. I suppose you don't need it.

Q. I don't think you do, either.

Re-direct examination by Mr. Breckinridge:

Q. Mr. Kohn has asked you something about the amount of money that was raised by the Honest Election League, and about its distribution; was there any of the money raised by that league used for election purposes on election day for any purpose connected with the advantage of either party?

A. I don't think the Honest Election League had a single man employed under pay on election day. I know that we employed men to take copies of the registration. That was pretty expensive itself, and there were a good many incidentals, but there was not one dollar used to corrupt anybody or any attempt.

Q. Was there any money distributed by the Honest Election League, on election day?

A. No, sir; not one cent.

Q. Had the Honest Election League any connection with either of the political parties?

A. None on earth.

Q. Did you and the members of the executive committee, as members of the executive committee, or the committee as a whole, hav any connection with either of the political parties in Louisville?

A. No connection with them.

Q. Did any of the members of that committee, I mean as members of the Honest League, or that committee, have any connection with either?

A. None on earth. It was separate and distinct, an organization composed of Republicans, gold Democrats and free silver Democrats.

Q. Who composed the executive committee of that league?

A. I can give you some of them; Mr. McGill, I have stated, was one; I don't know what his politics are. Maj. R. C. Davis, a Democrat, free silver Democrat, formerly a commissioner of election in Jefferson county, under this Goebel bill, was on the committee. Robert Cochran, another free silver Democrat, was on the committee. I had a list of them here somewhere. Judge Peckinpaugh was another. Kenneth McDonald was the chairman and a member of the committee, of course. Mr. R. W. Knott, editor of the Post, Major John H. Leathers, cashier of the Louisville National Banking Co., Dr. S. Atwood Smith, Mr. John Stites, president of the Fidelity Trust Co.; General Duke, and I am not sure whether James P. Helm was on that committee or not. I don't recall now; no; I don't recall, and myself. There may have been some others. There were fifteen, I think, on that committee.

Q. Mr. O'Neal a member of it?

A. I don't think he was a member of the executive committee. I think he was an attorney for the committee. I don't know whether he was a member or not. If he did, I never saw him at any meeting.

Re-cross examination by Mr. Kohn:

Q. I want to ask you who was the attorney for the league, the Honest Election League?

A. William H. Smith and Hardin H. Herr.

Q. They were the only ones?

A. They are the regular attorneys; I don't know; they did employ Mr. O'Neal and Mr. McDonald to prosecute some one particular case.

Q. Any other lawyers?

A. None others employed.

Q. Are Helm and Bruce the attorneys for the Honest Election League?

A. They were certainly not. They were never employed while I was at any meeting of the committee, and I never heard of their being regular attorneys.

Examination resumed by Colonel Breckinridge:

Q. Was there any connection between this committee and room 405 at the Equitable Building or the persons who occupied that room?

A. Absolutely none.

Q. There has been some testimony of some kind asked about

Major R. C. Davis and of his, at a certain time, resigning from the executive committee; did he resign from that committee?

A. He did not.

Q. Was there any order at any time that these gentlemen should go to the polls armed?

A. There was not. I forgot—Colonel Cowan is on that executive committee.

Q. Which Colonel Cowan?

A. Colonel Andrew Cowan, of Louisville. There was no order whatever about going armed. Of course, the matter was talked of among individuals, but it is natural to suppose that thing was not attempted to be regulated by the committee one way or the other. Many of them said they were not going.

Q. Mr. Kohn has referred to a meeting of the citizens at the board of trade at which meeting the mayor and other officers appeared and made statements, and in answer to that, you said the statements made by those officers were not accepted by the meeting?

A. No, sir.

Q. You were about to proceed to say why you thought they were not accepted, and Mr. Kohn interposed; will you repeat what you were going to say?

A. They were not accepted for this reason: The people saw that those officers were very earnestly working in behalf of Mr. Goebel. They saw those officers do what the people thought they had no right to do in capturing the June primary. They thought that was a very good reason for not accepting their political words, although personally most of those men would have been accepted all right—

Q. Was the change—did you know of a change in the officers of election made the night before the election day which some seventy-eight or seventy-nine Republican officers were removed and seventy-nine Marshall officers were put there—did you know of that?

A. Yes, sir; the Honest Election League was in session between about half past four and half past five; while we were in session there, information came that Mr. Caruth and Mr. Hoertz had changed the Republican officers in eighty-seven precincts.

Mr. Phelps: Seventy-nine?

A. Eighty-seven.

Colonel Breckinridge: Your information was eighty-seven?

A. Yes, sir.

Q. Was that after the meeting at the board of trade and after the pledges that have been spoken of had been given?

A. Yes, sir; that was at least two weeks after; I don't remember the exact date of the meeting of the board of trade, but it was long before that occurrence; that occurrence was just the night before the election.

Q. Was the Honorable Asher G. Caruth one who was present at the meeting?

A. Yes, sir.

Q. He made some of these pledges?

A. Yes, sir, he made very profuse promises.

Q. Was the proclamation made by Mr. Weaver subsequent to that meeting?

A. Subsequent to the board of trade meeting?

Q. Yes?

A. The proclamation was the Sunday before the election, the meeting was a couple of weeks probably before that Sunday.

Q. Was that proclamation accepted by you as proclaimed in the interest of peace or otherwise?

A. No sir, I regarded that as a political trick in the interest of Mr. Goebel's candidacy.

Q. Is the Hon. Asher G. Caruth in Louisville now?

A. I think so; I think he was there yesterday; I didn't see him, but I heard he was there; he is certainly living there.

Q. Were you present at the time that Judge Evans adjourned the grand jury of this court?

A. No, sir, I was not in court, I only have information of the fact.

Q. You didn't have any personal knowledge of what happened at that time?

A. No. sir.

Q. Did you know the clerk at the precinct at which you was, and at which you acted as an inspector?

A. Some one asked me about that; James J. O'Neill; I didn't know him until that day.

Q. Did you know whether he was fitted for clerk or not?

A. Oh, he was a bright fellow, and wrote a rapid hand, I think he was perfectly capable if he wanted to be.

Q. In answer to a question of Mr. Kohn, I understood you to say that your understanding was that the Brown Democrats and the Republicans in Louisville united to try to beat Mr. Goebel, and that you participated in that?

A. Well, Colonel, I don't think—I don't mean to say that they formally united, I think they each had that same purpose, I think each desired to beat Mr. Goebel, but I do not want to be understood as saying that I thought they intended to do it unfairly. I certainly made no effort and had no idea of doing Mr. Goebel any injustice.

Mr. Kohn: You have mentioned the names of the executive committee of the the Honest Election League—

Mr. Breckinridge: Were you ever a member of the Legion?

A. I was a member of the Legion about 1878, I think, for a short while, but I don't know whether it was actually the Legion. I was a member of one of the military companies just after the riots of 1877; that has been twenty-three years ago.

Q. Do you know whether that Legion at any time had Gatling guns or other—whether there was a battery attached to the Legion?

A. My understanding is they always had it.

Q. Always had a company—Battery A?

A. That is my understanding. I have seen them with their guns on the street in parades.

Q. You mean cannon or Gatling guns?

A. I couldn't say they were Gatling guns, I suppose, I have seen the Legion parading around there and had cannon, the nature of that I couldn't say.

By Mr. Kohn: You have mentioned names as being on the executive committee of the Honest Election League. Were all opponents of Mr. Goebel, composed of Democrats—Brown Democrats and Republicans?

A. I think every man was opposed to Mr. Goebel.

Q. Very bitterly opposed to him?

A. I expect each man in accordance with the intensity of his nature. All men don't feel alike.

Q. All they could be, they were?

A. Oh, I can't say that; I can't say, for instance, to the committeemen—I can't tell what is within your breast. They were opposed to Mr. Goebel.

Q. You have stated the reason why you mistrusted the word of these gentlemen made at the meeting was because of what you understood to have been the fact as to the June primary?

A. Yes, sir.

Q. Do you know anything of your own knowledge about that primary?

A. I didn't stay at the precinct.

Q. Don't you know that that primary was refused to be held under the law, that demand was made, and request was made, that the primary should be held under the law so it could be protected?

A. Under the statute, yes, sir.

Q. And it was refused?

A. All that is public information.

Q. Don't you know that Mr. O'Neal was chairman at that time, and it was not a fight between the Democratic and Republican party, but between what is known as the Whallen ticket and the Administration ticket?

A. I just know there were two factions of the Democratic party fighting about it. I don't know who the respective leaders were; I just simply know there was a quarrel between Democrats.

Q. Do you know of any fact connected with that matter to substantiate your statement, or is it just simply what you have heard from rumor?

A. You say to substantiate my statement. What statement?

Q. Your statement that they had taken possession of the June primary in July.

A. I never said that.

Q. That is what I understood you to say.

A. I acted on information, and the public acted on information

that they had done so, and from that belief, nobody trusted those men.

Q. Do you know of any fact to sustain that belief?

A. Of my personal knowledge, I have no knowledge, but I believe they did it, and everybody in Louisville on our side believed they did it, and that is the reason they didn't trust those people.

Q. Isn't it a fact that on the morning of the election for the first time for that primary a list of officers, and not a single man on it representing the party known as the administration party, and every man on it representing the Whallen party?

A. No, I don't know. I didn't take any hand in that fight.

Q. You then don't know anything at all about that fight, and yet you are willing to condemn these men when they made a solemn pledge, you would not believe what they said?

A. On politics, I declined to accept them. Personally I would believe most of them, because their acts were well known, and you form your opinion of people by their acts, not what you see them do, but by their reputation, like you form your estimate of a man's character.

Mr. Breckinridge: The matters upon which Mr. Kohn has examined you about the June primary were matters of public notoriety, were they not?

A. Yes, sir, everybody understood it.

Q. Published in the newspapers?

A. Newspapers were full of it, and talk all over town about it.

Mr. Kohn: It was also a matter of public notoriety that in that June primary they had put in thugs and heelers in every precinct of Louisville to run that primary simply through the officers of the precinct without regard to the votes cast?

A. I never heard that one way or the other, but no doubt part of it is true, because it is generally true in Louisville partially that they have thugs as well as gentlemen at the precincts.

C. C. Mengel, Jr., being duly sworn, and examined by Mr. Breckinridge, deposed as follows:

Q. What is your name?

A. C. C. Mengel.

Q. Where do you reside?

A. Louisville, Ky.

Q. What is your occupation or business?

A. I am in the lumber business.

Q. How long have you lived in Louisville?

A. Since 1873.

Q. What relation do you have or what office had you ever had in the First Regiment, Kentucky State Guards?

A. Colonel of the First Regiment of the State Guards.

Q. When was that regiment organized?

A. In July or August.

Q. Of when?

A. Last year.

Q. When were you elected colonel of it?

A. Early part of August.

Q. Who was the lieutenant-colonel?

A. Colonel Gray.

Q. Will you state to the boards of contest the steps you took in organizing it, and if you had any difficulties, the difficulties that you had, and the length of time engaged in the organization of that regiment?

A. The regiment desired to reorganize after they came back from Puerto Rico, a number of the captains wanted to form companies, and the Board of Trade of Louisville took up the matter, and gave them such encouragement as they could, and at last succeeded in getting the regiment fully organized. We went before the county court, Judge Gregory, and although he was very favorable to the Louisville Legion, having been a member of the organization himself, still he thought the time had not come for the organization of that regiment, as it would be better, he thought, to wait until a permanent site could be secured. He, however, stated that the personnel of the regiment was good, but delayed from time to time, on account of the request made by General Castleman, who was also in favor of waiting until a permanent armory site had been secured.

Q. Finally, did you get an organization?

A. Yes, sir; we got an organization and went ahead.

Q. What effort did you make to obtain a permanent armory, and at what time did you begin that effort, or any armory?

A. In answer to your first question, the Board of Trade had been advocating a permanent armory for a long time, and we seemed to have the co-operation of everybody in Louisville, including the mayor. The temporary armory was a necessity, and immediately upon being elected as colonel of the regiment, I went to the mayor and asked him to secure the temporary quarters. He was opposed to this, not that he was opposed to the temporary quarters, perhaps, but that it might jeopardize the securing of a permanent home, and he asked me not to press the matter until after the ordinance then in the council for a permanent organization had been disposed of, as that matter was to have come up that night. I deferred to his request, and delay followed that for some time; but in the meantime I requested him to go ahead and secure for us a temporary armory. In answer to my letter, he stated that he could do nothing in the premises, for the reason that he had no funds available for that purpose, and that some action would have to be taken by the council. I prepared a resolution, which was side-tracked in the council for some time, tabled or otherwise, and it was not until some time after that that during the absence of the mayor, whom I had met and talked over the situation with before his departure East, that a resolution was offered in the council. That resolution was the outcome of a conversation that I had, I think, with the mayor, who in

talking about it said that in agreeing with me that he could not subdue a riot, should one occur, and, therefore, whereas he was opposed to the temporary quarters then, still later on it might come about that he could support it. I asked him if he would talk to Mr. Barth, who was then a great friend of his, and the leader, I believe, in the aldermen—board of aldermen—and tell him the same thing he said to me, to which he responded that he would. He left town and I called at the mayor's office, and there met his secretary, Mr. Brown. He said that he was in favor of securing a home for the Legion boys, and arranged a meeting with Mr. Barth and Mr. Ross and myself in the office where this resolution was drawn. It passed the board of aldermen that night. It then went along, and under the rules, I believe, it has to lay over for a week. The lower board, through Mr. Smith, moved, as I understand it, to lay it upon the table, and there it remained; it was put there by a vote by a majority of two. At the same time that was going on he was asking my co-operation to secure for them a permanent armory, which I did all I could for. I then took up the matter of leasing the old armory on Seventh street and Mr. Ronald, Dr. Ronald, the owner of it, stated to me in a letter that we could have it for the sum of $2,100 or $1,800 per annum; that he would give us $300 on it and we could take the $300 out of the $2,100. In the meantime the board of trade said to go ahead and see what you can lease this armory, and we will raise the funds to protect you, until such time as the city of Louisville can raise funds and reimburse us. On the 22d day of September I write Mr. Ronald we would accept his proposition. He had, however, agreed to lease that armory to Mr. Bourlier for a term of five years for the sum of $1,600 per annum. There was some question as to the responsibility of this cornice company for which Mr. Bourlier, and he led me to believe if the security was not satisfactory, why then he would let us have it. I went to New York and was gone some time, as I am away a great deal, either there or elsewhere, and when I returned home I asked Mr. John H. Brand, who had been employed by me, to secure an armory and told him what I would like to have, and he had exhausted his energy in looking about for a desirable place. Nothing came of his work. On the 14th of October he wrote he could not secure the place I wanted. I wanted a place two hundred feet long by sixty feet wide, where I could drill. He found it almost impossible to find such a place in Louisville that he could get. We wanted the Bamberger-Bloom building that General Castleman had used when the troops returned from Puerto Rico, but they wanted $5,000 a year for this. And this other place was on the other side of the street, where I could drill, and I leased that October 6th, at the rate of $62.50, which was half rent for it, providing, however, that should the owners of the property receive a bona fide proposition of $125, that then we should have to pay that amount per month if we retained the property. The place was leased, and I immediately notified

the Governor of Kentucky that we would like to have the equipment arms, ammunition, etc., all the paraphernalia belonging to a regiment, and giving him a list of it, the ordinary list; and said we had a proper place to receive it. This was sent on October 28th, as I now remember, and reached Louisville on October 30th. In the meantime the armory was put up in condition to receive the equipment, uniforms, etc., the boxes and the racks on the walls for the guns, etc.; and we then commenced to drill.

Q. Was there any place in Louisville that could be found by Mr. Brand or you that was at all suitable or that could be gotten for an armory?

A. No place in Louisville that was as dry and as good and as nice, and as cheap, that we could get in the city of Louisville, and that was the result of a long and anxious investigation.

Q. Was the effort to get the old armory in good faith on your part?

A. Yes, sir.

Q. And you were prevented by what?

A. By the fact that it had been leased to this cornice company—the Bourlier Cornice Company.

Q. You said something about the suretyship of that lease; was that settled?

A. Yes, sir.

Q. You were notified by Mr. Ronalds of it?

A. Yes, sir.

Q. That you could not get it?

A. Yes, sir; and regretted it very much.

Q. There has been some testimony to the effect that on that property there has been a placard, "For rent"?

A. Yes, sir.

Q. Why is that; explain what is the nature of your lease, and about that placard.

A. As I stated before, before they could come upon us for the $125 per month, it was necessary for them to have a bona fide offer, and a bona fide party to lease it.

Q. You rent it at how much?

A. $62.50.

Q. If they get a bona fide proposition—

A. They must first give us the privilege of taking it; we have an option of $125.

Q. And do you still occupy that armory?

A. Yes, sir; and drill there every night; they are drilling there to-night, I guess.

Q. Has there been any purpose to surrender that armory?

A. No, sir; not until we get a new one. I have intended to get up plans for a new one to put upon the school lot at Eighth and Chestnut; and I think the new council will do it. I think with

$5,000 I could build an armory that would last for a great number of years and be a good place to drill.

Q. You have not been able to get a permanent armory; one that belonged to the city; the city has not helped you to get one?

A. Not as yet; I think they will.

Q. If I understand you, you are under obligation to keep this armory at $125, if you choose, if the owners get an offer of that price?

A. Yes, sir.

Q. Has it or not been your purpose to keep this armory?

A. Why, certainly; bound to keep it.

Q. Were you ever a member of the Legion?

A. No, sir.

Q. Did you know anything about the organization of the Legion; whether it had guns and a battery?

A. They had the paraphernalia that goes with a regiment. I dont know just how it was made up.

Q. Did they have gatling guns; more than one?

A. They had a number of guns; I think they did have gatling guns; I am not positive about that; I did not pay much attention to military affairs previous to the time I became connected with the regiment.

Q. Who paid for the rent of the armory?

A. The board of trade, on September 6th, I believe; I can refresh my memory if you think it is advisable, they passed a resolution authorizing the board to receive subscriptions for the maintenance of the armory from the citizens of Louisville.

Q. Was that done?

A. Yes, sir; it was published in the papers, and immediately there was a number of subscribers to the fund.

Q. Who were those subscribers, if you recollect?

A. There was Struck, Bickel, the cigar man; A. H. Mason, Ballard & Ballard, C. C. Mengel, Jr., Co., Belknap & Co.; and I do not remember—a number of little checks came in like $50.

Q. Little checks like $50?

A. We had enough without having the committee to look after it for a while.

Q. Have you a copy of the resolution passed by the board of trade?

A. I don't know whether I have a copy of the resolution, I have got—

By Colonel Breckinridge: We desire to file, gentlemen, the resolution in regard to the armory. I will read it. August, 30, 1899.

Mr. Theodore Ahrens, Jr., called up the matter of the armory for the Legion. He stated that even though steps were taken in the near future to provide a permanent armory that some suitable place should be secured at once as a temporary armory in order that the

regiment might be uniformed, armed and equipped, and therefore offered the following resolution:

Resolved, That the directors of the board of trade representing in large measures the business interests of the city of Louisville hereby petition the mayor and general council to take immediate steps to provide an armory for the First Regiment of the Kentucky State Guard, now fully organized and ready to be armed and equipped, by renting or leasing some suitable building where the arms and equipments may be safely kept and drilling take place, until such time as the city and citizens may provide a permanent armory worthy of our citizen soldiers.

Q. Is this a copy from the records from the board of trade?

A. This is just a memorandum of the action on that day.

Q. I will read it: "On September 6th a resolution was passed recommending the board of trade to undertake to receive subscriptions to the guarantee fund until such time as the city should provide one as required by law, and that a committee be appointed to carry out the provisions and suggestions." Was it under this resolution of September 6th that these subscriptions were made?

A. Yes, sir; that is the substance of the resolution. I asked a young lady to copy it.

Q. Were you present at any conversation, at any time, with Governor Bradley, when there were others present, concerning the calling of the First Regiment of the armory on election day?

A. That was Sunday afternoon when I received the order for the troops to be assembled at the armory on election day—during the day.

Q. Did you see Governor Bradley on Sunday?

A. Yes, sir.

Q. Now, did you receive on Sunday any order as to a guard to be assembled for the protection of the property?

A. Yes, sir.

Q. Have you a copy of that order?

A. Yes, sir. (Witness produces a copy of the order.)

Q. Is that the first order?

A. Yes, sir; that is the order about the detail.

Q. This is the order, is it not: "Executive Department, November 5, 1899. Colonel C. C. Mengel, First Kentucky Regiment, State Guard: You will detail and place in the armory such number of men as you think necessary to protect the property of the State and to prevent any person evilly disposed from taking or using the guns or ammunition in the prosecution of any breach of the peace. William O. Bradley, Governor of Kentucky." This is dated November 5th; do you recall what time of the day you got that order, Colonel?

A. About three o'clock in the afternoon. Colonel Gray and I went to see the Governor for the purpose of having a detail put there to protect the property on election day; and the circum-

stances in the meantime having developed, we thought in such a way, it would be advisable to put the detail on that night.

Q. Instead of putting the detail on on election day, if I understand you; you put it on Sunday night?

A. Yes, sir.

Q. Do you recollect the number of that detail?

A. Twenty or thirty.

Q. Just a guard?

A. Yes, sir.

Q. On the next day, on the 6th, did you receive orders of which these are copies?

A. Yes, sir; that is a copy of the order I received, with the instructions to the commanding officers, as to how he should proceed.

Q. I will read it: "State of Kentucky, Executive Department, November 6, 1899. Colonel Charles C. Mengel, Lieutenant-Colonel David W. Gray, First Kentucky Regiment State Guard: You are hereby ordered to assembly your regiment at their armory in the city of Louisville and have them ready by six o'clock to-morrow morning to act under my orders or ("or" it is; I suppose it should be "as.") the chief peace officer and magistrate of this Commonwealth for the suppression of riots or breaches of the peace, and protecting of the lives and property of the citizens in the city of Louisville during the day or the following night and to remain on active duty until relieved by me. Given under my hand as Governor of the Commonwealth of Kentucky, day and date above written. William O. Bradley."

"State of Kentucky, Executive Department, November 6, 1899. Colonel C. Mengel, First Regiment Kentucky State Guard: The commanding officers must act on the defensive and only permit the troops to use their edged or pointed weapons to repel violence except in the following cases:

"1. If an attack be made on the troops, or any one of them, by which his life is endangered, they may defend themselves by discharging their fire arms, and when the attack is general the commanding officers may order the troops to fire.

"2. If the troops can not be placed between the rioters and the persons or property they are intended to attack and the illegal purpose of the riot be persisted in by means dangerous to the lives or property of others, the commanding officer will disperse the rioters by ordering the troops first to use the bayonet and sword, and if they prove ineffectual then to discharge their guns. William O. Bradley, Governor of Kentucky." Do you remember what time on Monday, November 6th, you received this order, and these instructions?

A. Between the hours of twelve and one o'clock, at the Galt House.

Q. From whom?

A. Governor Bradley.

Q. Were you and Colonel Gray both with Governor Bradley at that time?

A. Yes, sir.

Q. Did you, in the conversation with Governor Bradley, make recommendation to him, or any request of him concerning those orders?

A. I stated to the Governor that I thought it would be a good thing to have the regiment assembled at the armory early in the morning on the day of the election, and told him of the available strength of the regiment; the number of veterans, as we call them, what we could do towards suppressing a riot, if one should occur; and what we had to depend upon, in the way of ammunition, etc.

Q. Was that request of yours to the Governor and advice of yours to the Governor, to have the regiment assembled at its armory, your judgment of what he ought to do?

A. It was unquestionably what should have been done.

Q. Will you now state to this board, what were the reasons you had for asking that of him, and for believing that was what he ought to do?

A. Well, the public were in quite an excited state of mind; the mayor had come out with a proclammation, which indicated a very serious condition. I had had a talk with the mayor a few days previous to the election. At the time Governor Taylor had made his address at the Auditorium, I met him on my way out to the Auditorium. I had been to the armory, and I met his honor at the corner of Market and Fourth streets, where I had gone to take the Fourth street car. He stopped me, and seemed to be more or less agitated, and said, "Charley, are you going to obey my orders?" I said, "Weaver, you have no right to order out the regiment." He said, "Yes, I have the right." Thereupon, I took from my pocket the pamphlet furnished by the adjutant-general, showing the law on the subject, and read to him therefrom the law pertaining to the question, which is in effect that the Governor may, when he deems it necessary, for the preservation of life and property, order out so much of the State guard as he may deem necessary. The mayor did not seem to understand this point. We went along further and talked over the situation. He told me that he had heard that armed men were going to be on the streets on election day, and that he should arrest John Baskin and others, who might be with him; also James Helm. I told him that was a reckless thing to do, and cautioned him about it; told him that the death of one of those men might precipitate a riot. "Well," he said, "I would arrest any man, even if he is my brother." I said, "You don't know that any of these men are going to be armed. They may appear on the streets as citizens, and to do a thing of that kind would be a very serious thing to do." And the very last words he said on that occasion, were, "Now, think about what I said about these troops." Of course, I knew what the law was and knew he had no right to

order out the troops. I suppose later on that he found out that he had no right to order them out. He told me, however, that he would swear in extra policemen.

Q. Did you hear, before that, or had you taken any steps before that as to assembling of the troops at the armory?

A. Not at that time.

Q. I mean up to that time?

A. No, sir.

Q. Was that the first intimation given to you by any official of the State or of the city of the possibility of the need of the soldiers on the election day?

A. Yes, sir; that is the first intimation I had directly from any officer in the employ of the city.

Q. Or had you had any talk with Governor Bradley before that talk with the mayor?

A. No, sir.

Q. Was that the first; was it or not, the first intimation you had from any official either of the city or of the State that troops might be needed on election day in Louisville?

A. That is the first intimation I had; that was before the Sunday I met Governor Bradley.

Q. Is the John Baskin whom he named as one of the persons whom he might order to be arrested on election day, the same Mr. John B. Baskin who was a witness here to-day?

A. I suppose so; I take it that he is the same man.

Q. Do you know any other John Baskin?

A. There is none that I know of.

Q. Did he give any reason why he would arrest John Baskin?

A. He stated that he heard he would be armed.

Q. When was his proclamation about armed men—was that of the same tenor as that conversation—that he intended to arrest armed men?

A. Yes, sir. (Objection to his statement about the proclamation, as the proclamation shows best what its tenor is.) That was my impression made upon my mind after reading it.

Q. Did he name any other persons, except Mr. John Baskin?

A. No, sir, that is only one, James Helm.

Q. John Baskin and Mr. James Helm?

A. Yes, sir.

Q. Did you communicate that conversation, or the substance of it to the Governor?

A. I communicated the substance of that to Governor Bradley.

Q. When?

A. On Sunday.

Q. In this conversation when you requested that the troops should be assembled?

A. Yes, sir.

Q. Under these orders were the troops assembled at the armory?

A. Yes, sir, in citizens' clothes.

Q. Just tell the board what was the conduct of the soldiers on that day; what your orders were, and what was one with them up to the time you received the Toney injunction?

A. In compliance with the order received from the Governor, I ordered the men to assemble at the armory at six o'clock on election morning; they came there in citizens' clothes; their clothes were at the armory; their uniforms. They arrived there in due course of time, and remained in the armory during the day, except at such time as I allowed such of the soldiers and officers to go to the polls to vote; and then under instructions to do so only in their citizens' clothes. At eleven o'clock I notified the quarter-master to ascertain where meals could be had at the lowest rate for the soldiers present. Rufer's Hotel made a bid of, I believe, thirty cents each, as well as the Hotel Normandy, one of which, the latter, being within two hundred feet of the armory, and the other on Fifth street, which is about one thousand feet from the armory. They were taken there in squads of about twenty, under commissioned officers, without arms or ammunition, and were brought back after they had taken their meals, and others allowed to go on until they had been fed. We remained in the armory all day long, until seven o'clock, when I received orders from the Governor to enforce the first mandamus.

Q. Now, during that day were any of those soldiers permitted to go, or did any of them go, upon the streets with guns?

A. Not permitted, and they certainly could not pass the sentry at the door, except at the time—

Q. From six o'clock in the morning until seven in the evening, were any of those troops on the streets—allowed to leave the armory with guns?

A. No, sir.

Q. Were any of them allowed to leave in uniform at all, except in squads to go to their meals?

A. No, sir, that was my instructions.

Q. Were you there during the day?

A. I was there all day long except when I went to vote.

Q. During the time you were there, did any soldiers belonging to the Legion—I believe you call it the Legion?

A. Yes, sir.

Q. Did any of the soldiers belonging to the Legion—were any of them permitted to go out of that armory in uniforms, except to their meals?

A. No, sir, none allowed to go, under my orders, and I don't think they did go.

Q. Did you receive that? (Handing witness a paper.)

A. Yes, sir; I received this order.

Q. Did any citizen of Louisville complain to you during the day

of the conduct of any of your soldiers, or the appearance of any of your soldiers on the streets?

A. No, sir; I never received a complaint.

Q. Will you look at these two papers and say whether you received them?

A. Yes, sir; those are copies of the orders, which I received.

Q. I now read these, Mr. Chairman: "Executive Department, November 7, 1899. Col. Chas. C. Mengel and Lt. Col. David W. Gray: Sterling B. Toney, Judge of the Jefferson Circuit Court, has made known to me that his order to admit the inspectors to the booths to witness the count has been ignored and that he is unable to enforce the same. You will proceed at once with your regiment, exercise your best judgment to enforce the order and leave sufficient men at each polling place to protect the officers during the count. You will give due notice of your purpose at each poll before proceeding to act, and may divide your forces as you see best. Given under my hand as Governor of Kentucky, November 7, 1899. William O. Bradley, Governor of Kentucky."

"Executive Department, November 7, 1899. Col. Charles C. Mengel, Lt. Col. David W. Gray: You will operate in the polling places named in the list sent you and you will exercise your discretion as to the number of men to be left at each place, or the places where they should be left. William O. Bradley, Governor of Kentucky." This is a list of the polling places?

A. Yes, sir.

By Col. Breckinridge: I consider it read:

Fifth ward, thirteenth precinct, 240 E. Main.

Eleventh ward, thirty-eighth precinct, Sixteenth, Main and Rowan.

Third ward, twenty-eighth precinct, 649 E. Main.

First ward, twentieth precinct, 724 Brook.

Twelfth ward, thirty-first precinct, 2222 Grayson.

Third ward, thirty-seventh precinct, 600 E. St. Catherine.

Twelfth ward, thirty-third precinct, 2222 Magazine (W).

Ninth ward, twentieth precinct, 708 W. Oak.

Eleventh ward, seventh precinct, Nineteenth, between Walnut and Madison.

Third ward, thirty-fourth precinct, 602 E. Jacob.

Ninth ward, fourteenth precinct, 635 Tenth street.

Fifth ward, twenty-fifth precinct, 334 E. Ormsby.

Ninth ward, thirteenth precinct, 632 Eighth street.

Twelfth ward, twenty-second precinct, 2603 Bank.

Fourth ward, second precinct, 757 E. Jefferson.

Twelfth ward, thirty-fourth precinct, 2617 Magazine.

Fifth ward, seventeenth precinct, 610 Brook.

Ninth ward, twelfth precinct, Eighth and Green.

Q. Did you obey that order? How did you obey it; will you just tell the board how, what you did under those orders?

A. At seven o'clock, I took a detail of ninety men, (I am re-

freshing my memory from a memorandum I have made out), under the command of Captains Henry, Truman and Jeffries, and visited the twelfth precinct in the ninth ward, situated at the corner of Eighth and Green streets, and found the polling place closed and the officers departed; at the thirteenth precinct, in the ninth ward, situated at 632 Eighth street, I found that Judge Toney's orders had been respected, and no inspectors there claiming admittance who had been refused admittance. At the fourteenth precinct, in the ninth ward, situated at 633 Tenth street, the election officers were at work, and I was informed by one of them that no one had demanded admittance as inspector and been refused. We visited the following polls in succession, in which we found the polls closed; Ninth precinct, eleventh ward, Nineteenth street near Magazine; seventh precinct, eleventh ward, Eighteenth street, near Walnut; twenty-third precinct, twelfth ward, Magazine, near Twenty-second street; thirty-first precinct, twelfth ward, Grayson street, near Twenty-second street; thirty-fourth precinct, twelfth ward, Magazine, near Twenty-sixth street; and then returned to the armory having communicated by telephone to the governor that all of the places we visited except two had been closed.

Q. Is it a fact, or is it not, that at no polling place did you find it necessary to use the military to put anybody in, or to take anybody out?

A. No, sir; the detail remained in the center of the street, and I made the announcement there.

Q. All the polling places which you visited were closed, were they not, except two?

A. Yes, sir. In one of them I found the inspector had been admitted and at the other they were proceeding with the work, and no one had claimed admittance.

Q. This was about what time?

A. I should judge a quarter past seven.

Q. When you left the armory?

A. No, sir; we left the armory at seven o'clock, and reached there about a quarter past seven.

Q. Did you take with you one or both of the gatling guns with the ammunition for the gatling guns?

A. I did not take any gatling guns along.

Q. Were you on the streets of Louisville that day—I believe you said not, except to vote?

A. That is all.

Q. You don't know, therefore, as to the state of the election, as to quietness, except at your own precinct?

A. Very quiet where I drove out to the place where I voted on Second street.

Q. Were you in uniform?

A. No, sir, in citizens' clothes.

Q. Were you in uniform at all that day?
A. Yes, sir.
Q. At what time?
A. About twelve o'clock.
Q. In the armory?
A. Yes, sir.
Q. Were you in uniform in the street at all that day?
A. I crossed over to the Louisville Hotel for lunch.
Q. And that was the only time?
A. Yes, sir.
Q. Did you know, Col. Mengel, and if so, when did you ascertain the fact to be that some seventy-nine of the Republican election officers had been supplanted by seventy-nine Marshall election officers?
A. I believe I learned this the night before the election. I knew of it from statements made by the papers, and persons I had met, who spoke of it.
Cross-examination, by Col. Young.
Q. What is the extent of your military service previous to your connection with the Legion?
A. The enjoyable experience of having been quarter-master-general on Governor Bradley's staff.
Q. How many times were you called into action previous to this?
A. That was the first time.
Q. Your introduction then into military dated from the appointment in Governor Bradley's staff?
A. Yes, sir.
Q. Did you ever drill a squad?
A. No, sir.
Q. Ever drill a company?
A. No, sir.
Q. Do you know any military command?
A. I would not say that I don't know that.
Q. How many do you know?
A. Not many.
Q. You are a warrior in Louisville—
A. I have not had any great amount of experience, you may be sure.
Q. You were then elected colonel of the regiment?
A. Yes, sir.
Q. Were you examined?
A. Yes, sir.
Q. On military points?
A. No, sir.
Q. Whose tactics do you use?
A. We use the tactics employed by the United States Government.

Q. Who is the author of the tactics?

A. I don't know.

Q. Now, Colonel, have you ever read the tactics through?

A. No, sir.

Q. Could you drill a battalion?

A. I could lead them, I guess.

Q. You have not been to war?

A. Do not make fun of me, Colonel, I took care of you once when you were sick.

Q. You could not drill a battalion?

A. That depends on how far it would go.

Q. I suppose you could say "right dress," and "left dress?"

A. I have made my position quite plain, that I did not pretend to any military ability, and I think you understand it.

Q. Was your fitness as Colonel of the regiment owing to your political prominence?

A. No, sir, the Louisville board of trade were very anxious to have this regiment. The papers had in the pressure jumped upon Mr. Barnett, who was the logical candidate for the colonelcy, and I was selected because it was thought I might be able to further the interests in developing the legion, and that the knowledge of tactics might come later on.

Q. Was it your financial ability, or your political activity, which you think caused your promotion to the colonelcy of the Legion?

A. The political situation had nothing to do with it. I know it. I received the unanimous vote of every man in that regiment.

Q. We all know you are a clever fellow; we were not dealing with that?

A. No, sir, you were dealing with my popularity.

Q. You are not called on to testify as a soldier; I am just dealing with your soldierly qualities. When did you get your commission?

A. In ninety days after August 3d.

Q. Figure that up for me?

A. November the third.

A. This last November?

A. Yes, sir.

Q. So then you were only commissioned about three or four days before the November election?

A. I was commissioned as soon as possible after my election.

Q. And you went through no examination by the adjutant-general, as to your ability to command the regiment?

A. No, not by the adjutant-general.

Q. Any board of officers examine you?

A. No, sir.

Q. How late did you see Governor Bradley, immediately preceding the election?

A. What day was it?

A. Yes?

A. It was on Sunday.
Q. That would be on the fifth of November?
A. Yes, sir.
Q. Where did you find him?
A. At the Galt House.
Q. I notice these orders are dated "Executive Department," or something of that kind, are they not?
A. Yes, sir.
Q. He was down in Louisville?
A. Yes, sir.
Q. He had moved that to Louisville?
A. Wherever he happened to be.
Q. Nothing had happened here to disturb the executive residence of the Governor?
A. You are as well informed on that as I am.
Q. But I am not testifying.
A. I thought you were testifying.
Q. No; I am trying to help you. You saw him then, on Sunday?
A. Are you talking seriously, or bum-bum, about moving the executive residence?
Q. You knew he had moved down to Louisville the executive department, for the purpose of using the troops in the city of Louisville?
A. No, sir; he came down here to make a speech.
Q. He did not make the speech, did he?
A. Not that I know of.
Q. What reason did he give for not making that speech?
A. The excitement prevailing in Louisville, as published in the papers.
Q. Did you see him on the Saturday night he was to speak?
A. Yes, sir.
Q. Where did you see him?
A. No, sir; Monday, wasn't it.
Q. Did you see him Saturday night?
A. If that was the night he was to speak; if he was to speak on Saturday night, I saw him Saturday night.
Q. Was anything said between you on Saturday about the condition of things in Louisville?
A. Yes, sir; more or less.
Q. You reported to him the conversation you had had with Mr. Weaver that night—had had some time previous?
A. I think it was on Sunday night I spoke of that.
Q. You have always been regarded as a very earnest Republican in the city of Louisville?
A. I don't know; I don't know that I am competent to speak of that.
Q. You have taken a reasonable interest in politics?
A. Yes, sir.

Q. You have not concealed the fact?

A. No, sir; none in the world.

Q. You knew of that fact and you talked about that on Sunday preceding the election?

A. On Sunday we spoke of that.

Q. Did you see Governor Bradley at Music Hall the night Denny made his speech?

A. Yes, sir.

Q. That night were you at Music Hall?

A. I went to Music Hall with Governor Bradley, and was down there about three minutes.

Q. Were you in uniform?

A. Why, no.

Q. Did you hear Denny's speech?

A. No; I didn't hear him, or any one else.

Q. How long did you stay there?

A. About three minutes.

Q. How long did Governor Bradley stay?

A. I don't know; I saw him there.

Q. You left him there?

A. Yes, sir.

Q. You have known something of the current history, as Colonel Breckinridge says, or rather adopted from us—you knew something of the current history of affairs in Louisville for two or three days preceding the election?

A. I was in Louisville.

Q. You heard of this blood-thirsty speech that Denny made there, about wading in blood?

A. I saw that in the papers; I saw what purported to be his speech.

Q. You heard Governor Bradley's speech at the Auditorium two or three nights preceding this, did you not?

A. Yes, sir.

Q. Did Governor Bradley make a quiet, calm, conservative speech that a Governor should make, or make a partisan speech?

A. He made one of the best speeches I ever listened to.

Q. Of course, it would please you; any speech that Bradley—pardon me, Governor Bradley, could or would make?

A. It would please any man who had the interest of the State of Kentucky at heart. He showed the economy that had been exercised throughout the executive department to the satisfaction of almost every one present.

Q. Did he urge the Republicans to vote the Republican ticket?

A. Yes, sir; of course he did.

Q. Abused Mr. Goebel and the Goebel law?

A. He did not abuse Mr. Goebel.

Q. He abused the Goebel law?

A. He spoke of it as being a very unjust law.

Q. He spoke there as a Republican partisan?

A. I should think he spoke as a philosopher.

Q. It touched you deeply?

A. He threw aside all partisan feeling, and came down to the merit of the proposition, by which one was to judge of the merits of the parties.

Q. So that struck you as being the speech of a philosopher and as being a great political economist?

A. Yes, sir; I was impressed that way.

Q. Assuming that that was Friday, when had you seen Governor Bradley prior to that time?

A. We went on to Chickamauga together.

Q. Had not you seen him some other time?

A. I don't recollect now.

Q. Did you meet him at Lexington?

A. Yes, sir.

Q. Any other military men there?

A. Col. Wilbur Smith, who was also a fighting soldier on the Governor's staff.

Q. Did you see Col. Roger Williams up there at any time?

A. No, sir; I didn't see him that time, unless at the depot for a moment; I don't know that I did see him at all.

Q. Were you called to Frankfort at any time to see——— prior to the time you saw the Governor at the Auditorium when he made that speech—called to Frankfort to see Governor Bradley?

A. No, sir.

Q. Did you see him at any time?

A. He was getting on the train to go up to Lexington.

Q. Was that an accidental meeting or pre-arranged?

A. Col. Gray and I wanted to see the Governor about the armory and equipment, etc.

Q. That the time you went to Lexington?

A. Yes, sir.

Q. Did Collier, the adjutant-general, go?

A. Yes, sir; he was the man we wanted to see.

Q. Governor Bradley along?

A. Yes, sir.

Q. Did you discuss any of the political matters in Louisville—the situation in Louisville?

A. I have no recollection of what I said to him on that occasion.

Q. You know something of the general drift of the conversation—didn't you discuss the situation in Louisville, and didn't you discuss the political situation in the State?

Q. We may have talked about that; I don't remember distinctly what we did talk about.

Q. How long did you stay in Lexington?

A. We came back on the next train.

Q. He came back with you?

A. I believe so.

Q. Was it there you met Col. Williams?

A. Yes, sir; coming back

Q. He came back with you?

A. Yes, sir.

Q. Then you had two colonels and an adjutant-general; anybody else?

A. I don't remember any one else.

Q. Now, what did you go to Lexington for? Give us a frank answer; you are always frank?

A. I went up to see the Governor, and went to see Collier at Frankfort, and he was not there.

Q. Could you not have seen them in Frankfort?

A. No, sir; because they were in Lexington.

Q. You came up to Frankfort to see them?

A. Yes, sir; to see Collier.

Q. You said you came to see about the armory. What did Governor Bradley have to do with the armory?

A. He manifested an interest in the armory for a long time past.

Q. For two or three months.

A. From the start; he wanted to know if I had gotten an armory.

Q. When were you elected—ninety days before November 6th?

A. I didn't say that; in the early part of August.

Q. Politics in the State of Kentucky was then on, wasnt it?

A. In August?

Q. Yes, sir.

A. I did not consider it a political fight at that time.

Q. The parties had made nominations?

A. I didn't pay any attention to that.

Q. You knew the Republican party had a candidate and that the Democratic party had a candidate?

A. I don't know whether they were nominated in August or not. I don't remember about that.

Q. You know there was a great deal of feeling in the State of Kentucky between the two parties?

A. I don't know that I did; I was away a good deal of that time.

Q. As early as August Governor Bradley began to exhibit a great interest on the subject of the armory in the city of Louisville?

A. He had always spoken about the armory in Louisville for a long time.

Q. Ever talk to you about that?

A. Just as I speak of, on the train.

Q. Not about your taking command of the regiment?

A. No, sir.

Q. When did that first come into your heart?

A. It never came into my heart. The first moment I saw that my name was mentioned for the office of colonel, I notified the com-

mittee that I would not serve; that I would not accept the position if it was tendered to me.

Q. With your ordinary modesty you thrust the military crown from you?

A. I did not want it.

Q. You yielded finally to their persuasions and took it?

A. I finally accepted it.

Q. They found you were a nice, convenient gentleman and they thrust it upon you?

A. I am testifying, Col. Young, and if you want to ask me a question, please do so.

Q. I will conduct the examination, and we will get along if you will be good humored?

A. I am always good-humored, as I know you are.

Q. I want to refer again to this Lexington matter: What did you talk about, the Governor and the adjutant-general, when you went to Lexington, when these gentlemen went with you on the train? Who else went with you on the train?

A. Lieutenant-colonel Gray, that is all, with me.

Q. Colonel Williams came back with you?

A. Yes, sir.

Q. Didn't Collier go with you on the train?

A. Not with me; he went with the Governor.

Q. You were all together going?

A. Yes, sir.

Q. Where did you stay at Lexington?

A. Col. Wilbur Smith's house for dinner.

Q. How long were you there?

A. I should judge—what is the difference of time from the arrival of the train to the coming back of it.

Q. Did you discuss any matters about the armory and the soldiers at Louisville while you were at Wilbur Smith's house?

A. Yes, sir, about the equipment.

Q. You were so full of it that while you were at this gentleman's house as a guest, you discussed military matters?

A. Not at the table; we had very little business, and only went to Lexington because we found we could not get to see him by getting off at Frankfort.

Q. Can you give us the date of that visit?

A. No, sir, I don't remember the date.

Q. About the time?

A. I can't remember that.

Q. Can you give us some general idea; you know whether it was one week or three weeks before the election?

A. I would like to, Colonel, but I can't remember just the time.

Q. When did this gatling gun arrive in Louisville?

A. It arrived in Louisville on Monday.

Q. One or two?

A. Two of them.

Q. That fact was well published in the newspapers of the city?

A. Not, through any information given by me.

Q. Were you trying to conceal the fact of the gatling gun being here?

A. No, sir.

Q. But it got out to the public that the gatling gun was there. How many rounds of ammunition did you have for the gatling guns?

A. I don't remember.

Q. How many rounds did the Legion have?

A. 8,000. I asked for 15,000 and got 8,000; and 2,000 blanks.

Q. What were those blank fellows for; to scare the people?

A. For practice, I suppose.

Q. Taking these blank cartridges; did you expect to practice with them when you made that requisition?

A. Yes, sir; Col. Gray suggested that we have them—have some blanks.

Q. Did you expect to use them in practicing?

A. Just on parade or something of that kind.

Q. You were not going to shoot off any guns when you were parading through the streets of Louisville?

A. In our encampment.

Q. You didn't expect to go into encampment in two or three days—

A. We expected to go into encampment in September.

Q. This is in November we are talking about. You ordered this mmunition on October 28th, and it arrived on November 6th. How ould that have any connection with an encampment in September?

A. It didn't arrive on November 6th, but on October 30th.

Q. If you ordered that ammunition on the 28th of October, and it arrived on October 30th, will you kindly explain what connection it had with an encampment in September?

A. It had no connection with it. We thought we would get the blanks when we could. The arsenal in Frankfort is not very liberal.

Q. Who made out this requisition?

A. Col. Gray.

Q. Did you know anything about it?

A. Yes, sir.

Q. Who told you to order about 15,000 rounds?

A. He thought we ought to have that.

Q. Did you ever hear of an encampment in the State of Kentucky in the month of November?

A. No, sir. I did not.

Q. You had two gatling guns?

A. Yes, sir.

Q. What did you want with those gatling guns?

A. Part of the equipment.

Q. You have not any artillery company in connection with the Legion; or did you have on the 5th day of November last?

A. No, but we had men that could operate them, and we thought they would be very useful in suppressing a riot.

Q. Now, Col. Mengel, you do not look like a bloodthirsty man; did you order those gatling guns down there for the purpose of firing into the people of the city of Louisville?

A. No, sir; I did not think there would be any necessity for firing them.

Q. You thought they would scare the people without firing them?

A. I thought in case of a riot they would be very useful.

Q. If you say you did not think there would be any necessity to fire them what did you have them brought there for?

A. They are a part of the equipment.

Q. You say that the presence of the gatling guns, and that 15,000 rounds of ammunition was enough to intimidate the people of Louisville, and there would be no necessity to fire the gatling guns?

A. No, sir; and that it not my answer e ither. I have answered it fully.

Q. It was not?

A. It was not my intention to intimidate anybody.

Q. Now, I will ask you this. Did you know, at that time, if so, name him, any one, two, three, four, five, six or seven men in the Legion that were artillerymen?

A. Well, Major Colston claimed to be a good artilleryman, and I understood from my lieutenant-colonel that he was in good shape to handle any guns of that kind.

Q. And, therefore, without any artillery company, with no intention of shooting into the people, you put in the requisition two gatling guns, and you got them, is that right?

A. I did not put in the requisition for two gatling guns.

Q. What did you put in the requisition then?

A. The gatling gun was promised to me when I was in Lexington last summer; they then had that at Lexington.

Q. Had you asked for that?

A. Yes; I asked for the gatling guns.

Q. Why did you ask for a gatling gun?

A. Good thing to have.

Q. Now, I will ask you, do you know the difference between a gatling gun and a twenty-four pounder; if so, kindly tell the committee here—they don't know much about military matters—kindly tell them the difference?

A. I don't know anything about a twenty-four pounder; I never saw one.

Q. Your knowledge then is confined to gatling guns. Now, did you ever fire a gatling gun?

A. I never did, as I told you before.

Q. How many times would your gatling gun shoot?

A. Well, it would shoot about—it would depend upon the rapidity with which you turned the crank. It would shoot—well, in each case there were one hundred and four cartridges—I suppose it would shoot about forty-five hundred times, perhaps more.

Q. A minute?

A. Yes, sir; a minute.

Q. And you were going down there with this gun, and shoot forty-five hundred times a minute, and turn it upon the people of Louisville?

A. I didn't say so.

Q. Well, you had some purpose in having the gun?

Objected to.

Q. I will change my question now; what object then, if you didn't have any artillerist, and artillery company, once for all, tell us what you wanted with the gatling gun there?

A. A gatling gun is a very useful machine in case of a violent riot; the mere fact of a gatling gun being present, that can be used upon a mob that threatens to destroy property and lives of the citizens, will quiet it, and that is a good reason for having it.

Q. Now, Mr. Mengel, were you ever in a mob?

A. No; I don't remember that I was.

Q. Did you ever see a mob, except the time that you and I saw that one in London?

A. Well, we did see one there, didn't we?

Q. Now, ain't that the only mob that you ever saw?

A. That is the only one I remember seeing.

Q. You never saw any in Louisville?

A. No; I don't know that I did.

Q. Now, we come down to this order; what time did you get your orders from the commanding general on the 7th; did you have on your uniform when you got the order?

A. What is the first question?

Q. I say, what time did you get the order to take your troops out from the armory?

A. About six o'clock.

Q. They all went to vote that day, didn't they?

A. All that were of age, that wanted to go.

Q. Did you make them strip off their soldiers' clothes before they went to vote?

A. I requested them to take off their uniforms.

Q. Do you know whether they did or not?

A. Those that I saw go out.

Q. You never issued orders to that effect?

A. I gave instructions to Colonel Gray and the majors.

Q. How did they go out, then; did they put on citizens' clothes?

A. Yes, sir.

Q. Why did you run that gatling gun out to the door; one gen-

tleman testified here that you run the gatling gun almost out to the door; did you do that?

A. No, sir.

Q. Where was it?

A. About fifty or sixty feet back.

Q. Could you see it from the street?

A. A man that is very inquisitive could look from one end of the building to the back.

Q. You know what a masked battery it, don't you, Mr. Mengel?

A. The kind you used when you were in the war?

Q. Well, a masked battery.

A. Well, from the description that you gave me on the steamship, I understand a masked battery is one that is concealed.

Q. You didn't mask your battery; you wanted the people, if they looked, to see it. If a man looked to see it, you wanted him to see the gatling gun, because of the effect it would produce on the public mind?

A. No, sir; had no such thought in my mind at all.

Q. You had a cellar there, didn't you?

A. Yes, sir.

Q. Why didn't you put it in the cellar, if you didn't want it to be seen?

A. We had one there.

Q. Why didn't you put both of them in the cellar?

A. The one that was in the cellar was disabled, and we put it out of the way.

Q. You kept the good one up there where you could use it; do you know whether it was loaded?

A. It was not loaded.

Q. Did you have the ammunition there?

A. Had it in a case in the vault.

Q. Did you have your horse caparison with you that day?

A. Horse?

Q. Yes; a colonel rides a horse, you know that, don't you?

A. I didn't have the horse ready.

Q. Now, when you went out that afternoon, did you have on your full regimentals?

A. All but the spurs.

Q. All but the spurs—did you have your sword?

A. Yes; the sword was on.

Q. Did you put your hand on it? How did you carry it—show us the movement with which you carried the sword?

A. Well, it hung by the side.

Q. Did you put yourself at the head of the troops, or did you occupy the position that the colonel usually occupies with his troops?

A. I went in front of it.

Q. Do you know the usual position of a colonel in command of a regiment, in case of firing?

A. I suppose he would be back of the firing line.

Q. You thought, Colonel, that you were safe, with the gatling gun and ammunition, and that you might go in front, you need not go in the back of the firing line?

A. No, sir; I did not terrorize the people, and no one knows that better than you.

Q. What was the line of march?

A. I have read that once; I can read it again.

Q. How did you go, just state

A. Went out Eighth street.

Q. Out to where?

A. Eighth and Green, I think.

Q. What precinct was the first one you hit?

A. 632 Eighth street.

Q. How many soldiers did you have with you—first, how many behind you?

A There were ninety, about, in the detail.

Q. You were right in front?

A. Yes.

Q. What did you do; rap on the door?

A. I went up to the door and asked if there were any inspectors—I made an announcement at the door, "If there were any inspectors there present to make it known to me."

Q. Did you give any order to your troops as you started out-

A. Yes; I gave them instructions, such as I received.

Q. Guns loaded?

A. No, sir; they were not loaded.

Q. How many cartridges did they have in their belts?

A. Twenty, I believe

Q. Did you see that those were put in before you left?

A. I ordered them put in; I didn't see it.

Q. How long before you went out?

A. Seven o'clock.

Q. At seven o'clock?

A. Yes, sir.

Q. Did you expect any order at seven o'clock.

A. Did I expect any order?

Q. Yes?

A. No, sir.

Q. You didn't anticipate any order?

A. No, sir; I didn't know of any.

Q. Then why did you have the order mentioned about the cartridges in their belts? Did you order filled cartridges, or empty cartridges put in there?

A. Filled cartridges.

Q. You marched out Eighth street, and came to this place on Eighth street; then you knocked at the door, did you?

A. The policeman knocked at the door.

Q. You did not knock?

A. No, sir; I asked him to knock; and I asked if any one wanted admittance.

Q. Did you draw your sword?

A. No, sir.

Q. What position were the troops in, in the street?

A. At rest.

Q. Did you make the change position when you got to that place, or did you simply stay in marching order?

A. Simply allowed them to stay in marching order.

Q. Were they in single or double order?

A. Four abreast.

Q. Well, you would have had some difficulty in wheeling them into line at once?

A. Not much.

Q. Could you have given the order?

A. I would have asked the lieutenant-colonel to give it.

Q. Was he with you?

A. Yes, sir.

Q. Now, did you find anybody there; was there anything to do, or had they fled?

A. At that first precinct there were two or three persons there present.

Q. Didn't you say when you went there—of course, I will not ask you to say what code you got this from, whether from the United States or Russian Code—but didn't you give this command, "If there be a Brown inspector, let him stand forth?"

A. No, sir; I said, "In the name of the Commonwealth of Kentucky and the Governor thereof, Judge Toney's orders having been disobeyed," or words to that effect, "if there are any inspectors, to let me know of it, and produce their credentials."

Q. Then somehow you said this, "In the name of the Commonwealth of Kentucky, by the orders of the Commander-in-chief, Judge Toney's mandamus having been disobeyed, I hereby call to know if there are any inspectors in this poll;" was that it?

A. I didn't say that. You say what I said—

Q. Now, Mr. Mengel, you attended some political meetings prior to the election—how many?

A. Political meetings?

Q. Yes.

A. What do you mean by political meetings?

Q. Consultation meetings, about the affairs in Louisville?

A. No, sir; I didn't attend any political meeting.

Q. Did you attend any meeting at the Galt House?

A. Well, if you call that a political meeting, I met the Governor there and took supper.

Q. Was there anybody else there, except you and the Governor?

A. There was Dave Colson, D. W. Long and Tom Landrum.

Q. Was Mr. Long chairman of the Republican campaign committee?

A. Yes, sir.

Q. Had he anything to do with the military force?

A. No, sir; we just met there in a social way that night.

Q. Didn't you discuss political affairs that night?

A. We talked over the situation, naturally—talkel over what was going on.

Q. Did you go to the Galt House the other night, when some Republican gentlemen met there—last Friday night?

Objected to.

A. I didn't go to any meeting, nor did I know of the meeting.

By Mr. Hickman: I don't see the point in it.

Q. Now, did you attend any political meeting prior to the election?

A. No, sir; I attended no political meeting, in the sense that you are speaking of political meetings, and I took no interest in the campaign except to vote.

Q. Did you go to the board of trade meeting that you describe?

A. No, sir; that was no political meeting; that was a meeting of the citizens of Louisville.

Q. You heard the pledges made by Mayor Weaver?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir; I certainly know him.

Q. Do you think he made a truthful declaration that day, or not?

A. I was inclined to believe he intended to do what was right.

Q. About Mr. Lyon—did you believe what he said?

A. I have a great deal of confidence in Mr. Lyon.

Q. About Mr. Bell; did you think he intended to do what he said?

A. I didn't know Mr. Bell very well; it didn't enter my mind.

Q. Did you believe Col. Haager?

A. I believed Col. Haager.

Q. These men impressed you that they meant what they said?

A. Yes, sir; those you mentioned just now.

Q. Now, when was this depressing effect produced on your mind by the proclamation that Mr. Weaver issued; when did you read that proclamation?

A. I think it was Sunday morning.

Q. Now you said something about Mr. Weaver a moment ago; and about armed men—arresting armed men; you didn't think it was right for men to go to the polls in the city of Louisville armed, in bodies, on election day, did you?

A. No, sir; I never did.

Q. You thought that was unlawful?

A. I always did think so; yes, sir.

Q. You saw no objection to the mayor of the city of Louisville, if men, with arms upon their persons, went to the polls in squads, of arresting or disarming those people, did you?

A. Well, I thought men standing at a poll, that were he to arrest them and precipitate trouble, that it might bring about a serious condition.

Q. Well, if he saw these men there armed, in squads—

A. How could he see them armed?

Q. Why, gentlemen can often times tell; I have seen men armed; haven't you seen men armed?

A. When their arms are exposed,I have seen it.

Q. Couldn't you tell by the position of men's coats, tell they were armed?

A. No, sir; I could not tell; I don't think you could.

Q. Oh, yes, I have.

A. I don't think you could; you might think that you thought you could see it.

Q. Now, Mayor Weaver told you this, that he understood these people were were going to the polls armed; that if they went to the polls armed, in squads, that he intended to arrest them?

A. He didn't say if they went there armed; he said he was going to arrest them.

Q. The matter of arming themselves had been discussed—the matter of whether they were armed, or not, had been discussed?

A. Yes.

Q. Some of these gentlemen had announced publicly in the papers that they were going to the polls armed, didn't they?

A. No, sir.

Q. Didn't you see anything about Mr. Arthur Wallace having announced that fact?

A. I never heard anything about Arthur Wallace.

Q. And didn't Mr. Weaver say to you this, that if these men went to the polls in armed squads, he would consider it an unlawful assemblage, and would arrest them, and asked you if you were called upon, would you obey his orders, if you were called upon to arrest these men for carrying arms?

A. He never asked me anything of that kind.

Q. Didn't Mr. Weaver ask you that if the military was called out, if you would regard his orders for the suppression of riot, and for the purpose of keeping the peace, as the civil authority authorized to call out the militia?

A. No; he didn't know what he was talking about. He thought he had the right to order out the regiment; the impression made on my mind, was, he wanted to make use of the regiment in case of a riot.

Q. I will ask you if Mr. Henry A. Bell, the sheriff of Jefferson county, didn't come to you on the day the troops were in the armory, and tell you that he was perfectly confident, and that the force at his command was sufficient to keep the peace, and that soldiers were not necessary?

A. He didn't say anything of the kind.

Q. At no time?

A. No, sir.

Q. What did he say?

A. He came in there very much excited; I doubt very much if he remembers what he did say. He said, "Col. Mengel, I hold you personally responsible if there is any bloodshed in the city of Louisville."

Q. Well, did that produce any impression on you?

A. I told him he had delivered his message, and he could go.

Q. Is that all he said?

A. He said further that there was peace and quiet in the city of Louisville.

Q. Didn't he tell you he was sheriff of Jefferson county, and he was capable of keeping the peace; if these troops were called out they should be put under his command?

A. No, sir.

Q. Nothing of that kind?

A. Oh, yes; he did say that he was sheriff, and the troops were under his command, and that we were not legally organized, in the next breath; he didn't know what he was saying, he was so much excited.

Q. Well, you were excited?

A. No, sir.

Q. Perfectly calm?

A. Perfectly calm.

Q. You had the soldiers and gatling gun behind you, and you were perfectly calm?

A. What that question—or just—what was that?

Q. Well, that is a state of facts. I said that you had the gatling gun and the soldiers behind you—

Counsel for contestees object and ask that the question be stricken from the records.

By the chairman: It ought to be stricken out.

Q. Well, I will ask you this question, then, Mr. Mengel: When the sheriff of Jefferson county came to you, you say that he was excited?

A. Yes, sir.

Q. At that moment was the gatling gun in the building with you?

A. Yes, sir.

Q. Were the troops in the building with you?

A. Yes, sir.

Q. Were you perfectly calm?

A. Yes, sir.

Re-direct examination by Colonel Breckinridge:

Q. Colonel Mengel, Colonel Young has asked you about a visit you made with Colonel Gray to Frankfort, and your going to Lexington with Governor Bradley?

A. Yes, sir.

Q. Was not the object of your visit with Colonel Gray to see General Collier, and obtain your equipment and to talk to him about your equipment?

A. Yes, sir; that is what we called there for.

Q. Had you any knowledge at the time that you left Louisville that Governor Bradley and General Collier were going to Lexington?

A. No, sir.

Q. When you left Louisville, did you leave Louisville with any idea that you were going to Lexington at all?

A. None whatever. I had no idea of it; didn't expect to see the Governor, unless he happened to be at home, when I called on him as a matter of visit.

Q. Your business to Frankfort was not with Governor Bradley, but with General Collier?

A. Collier is the man I wanted to see.

Q. Was there any consultation between Governor Bradley and yourself or General Collier or General Wilbur Smith concerning the use of troops in Louisville at the election, in that conversation at all, in any way?

A. No, sir.

Q. So far as you were concerned, was not your going to Lexington purely accidental and unexpected?

A. Well, I wanted to go up there when I had time.

Q. I mean meeting the Governor?

A. Oh yes; meeting the Governor.

Q. And meeting Colonel Williams?

A. Yes, sir.

Q. Now, at the time you ate supper at the Galt House, was that not simply a social meeting?

A. I was present there, and about to leave, and Tom Landram asked me if I would not stay and take supper, and I stayed.

Q. Your election to the office of colonel is by the regiment, is it not?

A. Yes, sir.

Q. Were you a candidate at all before the regiment?

A. No, sir; not a candidate.

Q. Is the regiment composed of men of various political opinions?

A. Yes, sir.

Q. Are there in that regiment persons who were members of the old Legion under General Castleman?

A. Sixty to seventy per cent. of them said to be.

Q. Many of those soldiers who were in the Spanish war, and at Puerto Rico?

A. Yes, sir.

Q. Had your election as colonel anything to do with the political canvass, or with your being a Republican, so far as you knew or believe?

A. No, sir; not in the least.

Q. I will ask you whether it is not true, that in the history of Louisville, there has been several occasions when the military were absolutely needed to keep the peace?

A. Oh, yes; so I learned.

Q. I will ask you whether in what is known as the Jenny Bowman riot—mob, if the gatling gun wasn't brought out?

A. I wasn't in the city at the time; I mean, at the time when that happened.

Q. Do you know whether these two gatling guns were a part of the equipment of the old Legion before it went to Puerto Rico, and was sent up to Lexington temporarily, while the Legion was gone to Puerto Rico?

A. As I understand it.

Q. (By Colonel Young). Do you know that of your own knowledge?

A. What?

Q. This answer that you are going to give about the guns?

A. Will you please wait until I answer it?

Q. I don't want you to answer it unless you know.

A. Let me answer it first.

By Judge Yost: I object to that interruption by Colonel Young.

By Colonel Young: No, sir; I have a right to know whether he is going to testify from personal knowledge.

A. I understand that the gatling gun at Lexington was a part of the Louisville equipment—belonged to it. Colonel Roger Williams told me so, and I asked the Governor to have that sent to us as soon as he could. I found out from Colonel Williams the gun he had was sent on to Hartford, Connecticut, and as soon as it returned, to let me have it.

Q. (Colonel Breckinridge resumes). Under the law, is it not so, Colonel, that the Governor has no power to issue a commission until ninety days after the election?

A. Yes, sir; it is obligatory under the law, to wait ninety days.

Q. So that whatever time you got your commission was fixed by its being ninety days subsequent to your election?

A. According to law; yes, sir.

Q. And your election was early in the month of August?

A. Yes, sir.

Q. I will ask you whether the organization of that regiment wasn't under and by means largely of the request of the board of

trade trying to get up and organize a regiment for the protection of property in the city of Louisville.

A. Yes, sir; they thought it was necessary for the protection of life and property of the citizens of Louisville, that there should be a regiment. That is the object in having militia—it would be of no service to the city and State—just wipe it off the statute books.

Re-cross examined by Col. Young:

Q. You were president of the board of trade at this time, were you not?

A. Yes, sir; I have been for the last three years.

Q. So, Mr. Mengel, the president of the board of trade told Mr. Mengel, of Mengel Bros., that it would be a good thing to have a Legion in the city of Louisville?

A. If I must answer that question, if it is a question—it is hard to say—I take it is a question, that the board of trade is composed of members of every party affiliation, and I didn't bring this matter up whatever; it was brought up by one of the old Legion officers.

Q. (By Col. Breckinridge): Which one?

A. Lieutenant-Colonel Belknap under General Castleman, and it was the consent—the unanimous consent of all the directors at the various times this came up, and it came up at different times, the same members not being present at each time, that this should be done. I mentioned it in my annual address at the opening meeting of the board of trade, showing that it was a necessity, as every man here knows.

Q. Talking about your want of military experience, do you know anything of the military experience of your lieutenant-colonel?

A. He is a man of great experience, and conservative, and a good man.

Q. (Col. Young resumes:) The Colonel Belknap who suggested this matter, as you say, to you, was a Republican, and a Republican candidate for office at this election, wasn't he?

A He didn't suggest to me, Colonel, if you will allow me to change the tenor of your remarks. It was addressed to the members of the Louisville board of trade.

Q. Well, by Mr. Belknap?

A. By Mr. Belknap—yes, sir.

Q. Mr. Theodore Ahrens, I see by the resolution you filed, made some mention about it; he is a Republican, too, isn't he?

A. I don't know what his politics are.

Q. And was a candidate at this time on the Republican ticket?

A. I suppose he was.

Q. So was Belknap?

A. I didn't know Belknap was.

Q. He ran for park commissioner, and you voted for him, didn't you?

A. I didn't make many marks this time.

Q. (By Col. Breckinridge:) Do you know of any Democrats on that board, of which Col. Belknap was one?

A. You mean the directors?

Q. Yes.

A. I never inquired into the party affiliation of any member of the directory of the Louisville board of trade.

Q. C. C. Mengel, W. B. Belknap and Louis Stewart?

A. I believe Mr. Belknap is a Republican. I know that I am.

Q. Alfred Brandeis?

A. I think he is a Democrat.

Q. (By Col. Young:) Oh, no; he is a Republican.

A. I have a right to believe what I think; that is what I think.

Q. (By Col. Breckinridge:) Wm. Thalheimer?

A. I don't know what his politics are. I should judge he is a Democrat, though.

Q. Marion Taylor?

A. He is a Democrat.

Q. Oscar Fenley?

A. He is a Democrat.

Q. James F. Buckner?

A. Republican; that is, so far as I know. Now, that is modified to that extent.

Q. Theodore Ahrens?

A. Well, the colonel made known to me he was a Republican, on the Republican ticket. I suppose he is.

Q. Julius Barkhouse.

A. I think he is a Republican.

Q. C. P. Ballard?

A. He is a Republican.

Q. W. G. Coldewey?

A. I think he is a Republican.

Q. Charles E. Curry?

A. I don't know what his politics are.

Q. Geo. C. Norton?

A. Democrat, I believe.

Q. Is he the Captain Norton that was with General Castleman, with the extra police at this election?

A. Yes, sir; he was assisting the extra police.

Q. A. Lee Robinson?

A. They are Democrats; I think all the Robinson are Democrats.

Q. Louis Stewart?

A. I think he is a Democrat.

Q. Peter Lee Atherton.

A. I think he is a Democrat.

Q. Thomas J. Batman?

A. I think he is a Democrat.

Q. E. H. Bowen?

A. I think he is a Democrat.
Q. A. Cowan?
A. Republican.
Q. Geo. L. Danforth?
A. I think he is a Democrat.
Q. W. W. Hite?
A. I think he is a Democrat.
Q. John C. Hughes?
A. Democrat, I believe.
Q. W. G. Munn?
A. Republican
Q. R. A. Peter?
A. Democrat, I believe.
Q. C. F. Huhlein?
A. Democrat. I am just giving the benefit of what I know; I am telling what I believe. I always thought Mr. Huhlein was a Democrat; he may have voted for Mr. Taylor this time; I don't know.
Q. C. G. Strater?
A. I think he is a Democrat.
Q. J. M. Ryan?
A. He is a Republican.
Q. They are the directors of the board of trade?
A. At that time—yes, sir.
Q. Directors of the board of trade when you were president of it; you seem to have been president at this time?
A. Yes, sir; at that time, whenever that was printed.
Q. Now, is the board of trade composed of gentlemen of all sources of politics?
A. In the city of Louisville—yes, sir.

Re-cross examined by Mr. James:

Q. Colonel, is Peter Lee Atherton a Democrat?
A. Yes, sir; I always understood so.
Q. Didn't he stump the state in 1896 against Mr. Brown?
A. He stumped it for Palmer and Buckner.
Q. And that is your definition of Democracy?
A. He always has been. I am just speaking of the general bent of the man's character, as to his politics.

J. B. Pirtle, being duly sworn and examined by Mr. Breckinridge, deposed as follows:

Q. What is your name?
A. John B. Pirtle.
Q. Where do you live?
A. I live in Louisville.
Q. How long have you lived in Louisville, Major.
A. All of my life, sir, except four years of the war, the war between the states.
Q. Was it during the war that you were absent from Lousville?
A. Yes, sir.

Q. Where were you then?

A. I was in the Federal army.

Q. What Brigade of it?

A. In the infantry brigade, in the old Kentucky Brigade—in the Orphan Brigade, as it is now called.

Q. In what regiment?

A. At first in the Ninth Kentucky, and afterwards in the Fourth Kentucky, and afterwards a staff officer in the brigade, and afterwards a division adjutant-general.

Q. You were division adjutant-general on what staff?

A. On the staff of Major General Bate, who is now senator from Tennessee.

Q. And you were on the brigade staff of——

A. I was in addition aide-camp and provost-marshal on the staff of Ben Hardin Helm.

Q. What is your occupation in Louisville?

A. I am an insurance agent.

Q. Were you in Louisville at the last election?

A. Yes, sir.

Q. Were you in Louisville before the last election, up to say the preceding several days before the election?

A. Well, I think I was. I am very frequently away from home, from four to five days sometimes, and sometimes a week at a time.

Q. What is your occupation?

A. I am an insurance agent.

Q. Of what company?

A. Well, I am the general agent of the Travelers' Insurance Company for the State of Kentucky.

Q. From your knowledge of the condition of the public mind at Louisville, from all the facts that were within your knowledge at such time, what was your judgment as to the wisdom and necessity of assembling the First Kentucky Regiment at its armory on election day?

A. I thought it was very wise; there was a great deal of feeling; a great deal of apparently suppressed feeling in Louisville. I don't think I have ever known more excitement than there was in the five or six days preceding the election.

Q. What is your judgment as to whether the assembling of that regiment at the armory helped to preserve the peace, and give encouragement to the voters of Louisville to vote, or to intimidate them or keep them from voting?

A. I am very firmly of the opinion that it prevented a riot. I do not believe that the assembling of the Legion at the armory, and being under the civil authorities, intimidated any single man.

Q. What effect do you think it had as to giving belief to the people of the city that there would be peace and order, and inducing persons to go to the polls?

A. I think it had a very happy effect. I doubt very much if the

Legion had not been assembled, if there would have been anything like the vote that was cast.

Q. There has been in this testimony, Major Pirtle, a statement made by one of the witnesses, of A. Pirtle going to the office of Mr. Clarence Walker?

A. Oh yes.

Q. And of having some interview, or making some affidavit, or taking some steps before Judge Toney; are you the Pirtle to whom reference was made?

A. I am, and if the board will allow me, I will explain fully how I happened to do so.

By the chairman: Go ahead.

A. I want to say to the board that I have never been considered a partisan in any sense.

Objected to.

Q. State the facts.

A. I have taken no part in politics, except to go to the polls and vote, I think, in the last twenty years, until this last election. Some months ago I was asked to become a member of an organization which would endeavor to see that a full, fair and free vote was cast in the city of Louisville, and when I read the proposition or whatever you may call it, that was made to those who were to become members of that body, I agreed to become a member of it, because it stated that it was not in any sense of the word to be a partisan body. I did not attend any meetings of the Honest Election League, although I was a member of it. I received notices several times, but I did not go to their meetings at all. The day, I think, before the election, I was asked to go to the thirteenth precinct of the ninth ward,and to remain there during the day. I demurred. I did not want to go. I said "I am not in the habit of going to the polls, except to vote and get away as quick as I can, and I don't want to do it." And they insisted that it was men just like me, as they expressed it, that they wanted to go to the polls. They said they wanted men, conservative men, and men of firmness; that this was rather a tough precinct, by the way, and possibly the presence of a few gentlemen there would have a good effect. I then agreed to go, with the understanding that Mr. John W. Green was to go with me, and two or three other gentlemen whom I was allowed to select. I asked Mr. Arthur Rutledge to go with us, and he agreed. Mr. Green asked Mr. John Jackman, who was a Goebel man, known to be a Goebel man, and Mr. Walter Walker, of Harbison & Gathright, who was also known to be a Goebel man—they were asked to go with us, and they declined. That afternoon, that means the afternoon before the election, about between four and five o'clock, Mr. Green came over to me and appeared to be quite excited, came into my office and said, "I shall not go to the polls to-morrow at all." I said, "What is the matter?" He said, "I have gotten a communication from the Honest Election League asking me to go to the polls to-morrow

morning and there to work as a Brown worker, and to spend the day. Now, the understanding was that if I went to the polls, and if you went to the polls, we were to go there in an entirely non-partisan spirit, and endeavor to see that every man, Goebel man, Brown man, or Taylor man, who had the right to vote, should vote without prejudice." Well, I expressed my astonishment. I said there must be some mistake about it, and that it was a mistake I was assured, and I said "We will go right over now; it is only a short distance, we will go over to the Honest League headquarters; I have never been there, but I will go over there with you and see if there is not somebody that can tell us about this order." It happened when we went over there we found the executive committee in session. Mr. Green went before the committee, in my presence, and made his statement. They expressed utter astonishment, and denied it emphatically, that any such order had been given. We both told them that we would not go to the polls. Finally, after the president of the league had stated emphatically that he had given no such order, and had called on his secretary, and who stated he had known of no such order, Mr. Green said, "I tore it in two and threw it in my waste basket; I will go over and get it. So, we waited for him to get it; he came back in a few minutes; and it was a communication from the Brown district committee, and not from the Honest Election League at all, after he had read it, so we then decided, as it was not in any way—didn't emanate from the Honest Election League, we would go there. The next morning after I voted, I went—expected to go to Ninth and Walnut, as that was said to be the polling place, but when I got in that neighborhood, I found it was on Eighth street, near Walnut. I found Mr. Rutledge was already there and Mr. Green, and together we watched the voting that day.

Thereupon the board adjourned until Wednesday, January 24, 1900, to two o'clock, p. m.

Louisville, Ky., January 24, 1900.

The board met, pursuant to adjournment, at 2 o'clock.

Direct-examination of John B. Pirtle was resumed by Mr. Breckinridge as follows:

Q. When we adjourned last night, you were speaking of having gone to the polls—at what precinct was it that you went—to what precinct?

A. It was the thirteenth precinct of the ninth ward.

Q. Where is that located?

A. Heretofore it had been at Ninth and Walnut, but on this day it had been moved to Eighth street between Walnut and Green.

Q. Dou you know whether this change had b en advertis d or not?

A. I don't think it had; possibly in the morning—the morning of the election.

Q. Will you state to the board whether the election proceeded rapidly or slowly there; the vote?

A. When I got there, there had been some votes cast; I didn't get there immediately, as I voted before, at my own precinct, before I got there. It seemed to me they were voting very slow, and saw Mr. Mike Duffy, the plumber in Louisville, in the line near the front of those who were in line to vote. I asked him to request the election officers to expedite the vote, that I was of the opinion that they were voting so slowly. We could not vote more than five or six, at least, in an hour; couldn't vote more than that in an hour, and to ascertain the cause, and to urge them to expedite the vote. He promised me he would. When he came out, he came directly to me, and he said, "it is very cold in there; they have no stove, no fire, and the clerk tells me that his hands are very nearly frozen; he can't write any faster." Several—one of the gentlemen who was with me proposed to go and get an oil stove to put in there and do something to make the vote cast faster.

Q. Did it get faster during the day?

A. It didn't at all at any time. We were very much annoyed by it all day. We chafed under it, because we knew that at the rate that the vote was being polled, there wouldn't be one-half or not more than one-half probably of the vote that had been registered that could be cast.

Q. Do you know whether that precinct is a Republican or a Democratic precinct?

A. I was informed that it was—

Objected to.

Q. From your knowledge?

A. That has been known, and is known to all these gentlemen from Louisville, to be a Republican precinct. If I am allowed, I will say that I asked one of the men, I don't remember from what side it was, men who were there, though, in the interest of a candidate—how many voters there were registered—

Objected to.

Q. Do you know how many voters were registered in that precinct?

A. Of my own knowledge, I don't know.

Q. Do you know how many votes were cast?

A. There were one hundred and eighteen votes cast during the day. May I state that the number of votes that were registered—

Judge Yost: I think that is clearly competent.

Mr. Kohn: If you know?

A. I don't know of my own knowledge; of my own; I have no knowledge; it is not my precinct. I was shown a list of all the registered—I didn't see the book, but I saw a copy from it; I saw a copy from the registration book; there were two hundred and six votes registered.

Q. And one hundred and eighteen cast?

A. One hundred and eighteen were cast, yes, sir. I will state further, feeling anxious that we should have a full vote, or believing

that it was right and proper that we should have a full vote and being there in the discharge of a duty which I conceived to be, to get out a full vote, I asked one of the negro voters to come to me just as soon as he got through to tell me what occurred in the —

Objected to.

A. I propose to tell simply—to show you why the vote was so slow.

Objected to.

Q. From the information that you got, what then did you do?

A. We couldn't do anything; there was absolutely nothing to do.

Q. Then did you—the name has been given of a Mr. Pirtle who was at—

A. Now, you are getting towards the close of the vote, when the vote closed. I notified the other two gentlemen who were with me that I would be obliged to go to the Louisville Trust Company, to a board meeting, at three o'clock. I left the polls probably quarter before three; I got back about half-past three. We were not long in session, and when I returned—or a few minutes after I returned—probably a quarte of four o'clock—Mr. Green came to me, called my attention to a man whose name was Caldwell who he said—

Objected to.

—Then I was introduced to the Republican inspector who showed me his credentials.

Objected to, as to anything that gentleman may have told the witness.

A. I don't propose to tell you what he told me.

The chairman: Don't tell what he told you.

A. Mr. Caldwell told me that he was the Republican inspector—

A committeeman: That is the very thing we told you not to tell.

A. He showed me his credentials.

The chairman: That is competent.

A. Mr. Caldwell showed me his credentials, signed by Mr. Alf. Davis, the chairman of the Republican committee. I suggested to him that if he could arrange to do it, that he would show them to the sheriff in order that he might be admitted as soon as four o'clock came. When four o'clock came, when they announced that the polls were closed, I saw Mr. Caldwell, the republican inspector, and Mr. John Green who I didn't know up to that time had been made the Brown inspector, because all that occurred while I had gone to the Louisville Trust Company meeting; Mr. Green was not known to be by himself or any one else as designated as inspector for the Brown people up to the time that I went to the Louisville Trust Company meeting; but while I was gone, it seems that Mr. Green was made the Brown inspector at that precinct; so when Mr. Caldwell went forward to present his credentials to the sheriff, Mr. Green went forward also, and I didn't understand that. I saw it, though. I saw both of them go to the door. I noticed as they went;

could tell from pantomime that there was some discussion going on, some possible differences there from their gesticulation. I saw Mr. Caldwell hand out his credentials. I saw Mr. Green—

Objected to; objection overruled.

—I saw, all at once, these two men violently thrust out, and the door was locked. Well, the polls had then closed. It was after four o'clock, and there was no longer any reason why everybody should remain outside of the fifty foot line, and I went forward myself, to ascertain what was the matter. I was informed that the sheriff had forced them out and locked the door. That was apparent to me; I could see that myself.

Objected to.

—I want to say further that there was a glass door at the voting place, in the room of the voting place, and across that glass door there had been a newspaper pasted so we couldn't see inside of the room at all. After remaining there for seven minutes after four o'clock, these inspectors urging and begging to be allowed in this room, I turned to Mr. Arthur Rutledge, who was with me, and proposed that we go to Judge Toney's office to acquaint him with the facts that these inspectors were not allowed to be admitted by the election officers. He went with me. We went to Judge Toney's office; he was not in. We went into the clerk's office next door, and were informed that we would find him in Clarence Walker's office. We went to Mr. Clarence Walker's office and met him and found him alone, I believe with Mr. Walker, possibly, and stated the facts to him. He directed us to go to Mr. Helm Bruce and take out an affidavit—make an affidavit. That was about, I remember, I think I looked at the clock—I think you can see from Clarence Walker's office the clock in the city hall, I think it was just then fifteen minutes after four o'clock. We went up to Helm Bruce's office, and by the time we got in there, his office was becoming crowded with men; they were coming from all over town; Brown inspectors and Taylor inspectors, not allowed to be admitted in the different precincts. We sought as early an opportunity to talk to Bruce as we could, which was almost immediately; he listened to us at once, and he seemed very much concerned, and stated he would go down and see Judge Toney.

Mr. McQuown: Who was that that was concerned?

A. That was Helm Bruce. In a few minutes, he came back and said that "Judge Toney has issued an order to the chief of police, Mr. Haager, to admit the Brown inspectors, which Mr. Haager has agreed to respect. You go back to your polls and probably before you get there, the order will have reached the policemen there." We did go back, Rutledge and myself. I made the announcement to Mr. Caldwell. I had never known Mr. Caldwell before in my life. I made the announcement to Mr. Caldwell, and to Mr. Green of what Mr. Bruce had said. We asked the policemen if they had gotten any instructions, and they said they had

not; and, by the way, I want to say here, that the policemen down there behaved themselves admirably all day; they attended to their duty exactly as they should have done; there is no complaint can be made of the policemen. They said they had no such order. I said, "Well, I suppose you won't—let these inspectors—you won't require these inspectors to be admitted without an order of that kind." They said they would not, or an order that they had a right to respect. It was getting late then, and we waited, and waited and waited. In the meantime, after we had returned, some time after we had returned, there was a squabble apparently in the room, and that newspaper which prevented any one from seeing into the room, was torn apart, and there was a hole, probably that large, nearly a foot large, made in that paper, so we could see into that room, and I think from that time on until they were admitted either Mr. Green or Mr. Caldwell kept their eyes glued to that hole, and they could see inside of the room. I saw inside of the room. I felt—may I say what I—

Mr. Breckinridge: No, just say what you did?

A. I won't say what I felt. We waited there until pretty nearly dark. No one came to notify the policemen that these inspectors should be admitted. I then turned to Mr. Rutledge and I said, "Arthur—.

Objected to.

A. May I say that Mr. Rutledge went to a telephone for us and telephoned to Mr. Haager to ask him to telephone to the policemen—.

The chairman. Yes, sir. He did that at my request, I may say.

A. Mr. Rutledge didn't think it would amount to anything, but after my insisting on his going, and asking him to request Mr. Haager to have the policemen come to the telephone, that he might instruct them, he said it would do no good, but he would go and try it. Mr. Rutledge went to a telephone in a drug store very near our polling place, and in a few moments he came back and told Officer Tierney, who was one of the policemen at our precinct to come to the telephone, and call up 150. Officer Tierney and the other policeman went with him. They both went to the telephone. In a few minutes they came back. Officer Tierney knocked on the door. No attention was paid to it, and he called one of the election officers inside, I remember he called him by his first name; therefore, he must have known him rather intimately, and still no attention was paid, and he called again, and he said, "You are to let me in there, I have orders from Chief of Police Haager," and they wanted to know what he wanted. He said, "Well, you let me in, and I will tell you." And my recollection is that he said that if they didn't do it he would arrest the whole party. I am most positive about it, that is my recollection. Well, they finally opened the door a little bit, and said if none of us, none of those who were outside, would attempt to follow he might come inside. He was admitted. We had prom-

ised very promptly that we would not attempt to enter the room. He went inside, and in a few moments, the door was opened a little bit again, and some one from the inside said, "If you people out here will promise not to attempt to come in, we will admit the inspectors," and we very promptly said, "We do not want to come in, that is all we want, you to admit the inspectors." The door was opened and Mr. Caldwell and Mr. Green and some other man, whose name I don't know, he probably had authority, went inside. Then Mr. Rutledge and I went home, and that is all I know, gentlemen.

Cross-examination by Mr. Phelps:

Q. Mr. Pirtle, I anderstand you say that the officer on the last occasion announced if you people would stay out that he would let the inspector come in. How many people were there in your party altogether?

A. I suppose seven or eight. I don't know that they were in my party. There was nobody in my party except Mr. Green and Mr. Rutledge and Mr. Caldwell, the inspector.

Q. How many people were there pressing up to the door when the officer made that suggestion about if you people would stay out?

A. I don't think there was over seven or eight, I think, altogether.

Q. Were they pretty close up to the door?

A. Yes, sir; they were all on the sidewalk, near the door.

Q. As you stated, the police department of the city of Louisville on election day gave to you and to others, so far as you personally know, every reasonable assistance, and complied with every reasonable request that was made, did they not?

A. That was only at that precinct, and I can only speak of that.

Q. So far as your own observation goes, that is a fact, is it not?

A. It is. I saw no breach of the peace on the part of the police, or any improper action.

Q. When Mr. Rutledge telephoned to the chief of police, he immediately got the relief that he asked for, did he not?

A. He asked the chief of police to allow Officer Tierney to come or to direct Officer Tierney to come.

Q. And he did?

A. He did; right away.

Q. And Officer Tierney got his orders to allow—to see that you gentlemen went in, and he obeyed them?

A. He did, very late in the evening, two hours and a half after the polls closed, at least.

Q. Do you know personally of any precinct in the city of Louisville in which the inspectors were not admitted?

A. No, sir; you mean immediately at four o'clock?

Q. Do you know of any precinct except the precinct you have

mentioned where they were not admitted promptly at four o'clock?

A. I have no knowledge, no, because I was nowhere else; couldn't know.

Q. At the precinct you have mentioned, you were not an inspector?

A. No, sir.

Q. You were an on-looker?

A. I was an on-looker.

Q. The gentleman who was inspector did get in?

A. He finally did.

Q. You said that during the progress of the events that you have related, you looked through the break in the paper and could see into the room?

A. Yes, sir.

Q. What were they doing in the room when you looked in there?

A. They were not doing anything.

Q. Nothing at all?

A. No. I can tell you why, if you want to know.

Q. I don't want to know why, because I don't suppose you do know why.

A. I do know why.

Q. You may tell it then?

A. Because I have it from one of the—

Q. I don't want what you have from anybody else. I say anything you know, you can tell?

A. Of course, I could only say—

Q. In order that we may understand each other; it is a plain rule of law that anything a man knows of his own personal knowledge, aside from what somebody else tells him, is evidence.

A. I can't say I know it, because—

Q. Anything you know, no matter what it is, I want you to tell.

A. I don't know it in that sense.

Q. When you looked in, they were not doing anything?

A. No, sir; the moment—

Q. How many people were in there when they were not doing anything?

A. I think there was one man besides the officers, I think there were five men inside; I will say further, that just before the polls closed, I saw a man cross the street and walk right into that polls without the slightest opposition on the part of the sheriff.

Q. Do you know who he was?

A. I heard his name was Price, and I heard, too, that he was said to be a Hambrick inspector, and that was before the polls closed, Mr. Phelps.

Q. You again, Mr. Pirtle, very much against my wish, tell what was said to be. I want you to tell only what you know?

A. I asked who that man was.

Q. That is not competent, what somebody told you?

A. I beg pardon, because I don't mean—

Q. There is no offense. I want you to confine yourself to what you know. The only man you saw go in there, you don't know of your own knowledge what rights he had?

A. No, sir.

Q. There were four officers in this roll?

A. Yes, sir.

Q. Do you know the four men?

A. I didn't know any one of them personally.

Q. You don't know the politics of any of the four?

A. Personally?

Q. Yes.

A. No, sir; I have never known them.

Q. So as to who was in there, who the people were, or what their politics were, you don't know anything about that?

A. I had never seen any of them before in my life, and I couldn't know, I could only know when their names were mentioned to me; I could tell who they were, of course, because two of them were supposed to be Democrats, and two were supposed to be Republicans.

Q. You don't live in that precinct?

A. Oh, no.

Q. You didn't really know any of the people, the voters, or the officers, did you?

A. Oh, yes, I did; I knew quite a number of the voters.

Q. Who did you know that were voters in that precinct?

A. I knew Dr. Garvin, he was a voter there.

Q. Who else?

A. I knew Mr. Mike Duffy, he was a voter, and possibly others; I don't recollect; there were some others.

Q. That is all you remember out of one hundred and eighteen?

A. Yes, sir.

Q. How far did you live away from that precinct?

A. Probably a mile and a half.

Q. Do you know whether any of the votes had been counted at the time that Chief Haager finally forced the inspector in there?

A. I am very sure there wasn't any because if there had been somebody would have gone in that precinct. I felt very confident of it.

Q. You are very sure that nothing had been done, so that although the thing was a little belated, as a matter of fact, all of the rights of the parties were really protected?

A. I really believe it.

Q. You said, if I caught you correctly, that the voting at that precinct was very slow, that they wouldn't vote over four or five an hour?

A. I counted it; I took out my watch and counted. Some of

them were eight minutes, some were ten, and some as much as fifteen minutes, coming out of the polling place.

Q. What would that average an hour?

A. I don't know; there were one hundred and eighteen votes cast between seven o'clock in the morning and four o'clock in the afternoon; they were apparently voting right along all the time.

Q. That really averaged about nineteen an hour instead of five, didn't it—one hundred and eighteen, and there were nine hours?

A. You can calculate it as you choose. I didn't count every vote by my watch. I did some, I tell you, and some of them were nine minutes, some were eight minutes, and some were even as much as fifteen minutes.

Q. Did you see into the precinct during the voting, or did you go into the precinct?

A. No, sir; I didn't go inside the fifty foot line.

Q. So, of course, you can't give the gentlemen of the commission any light upon the question as to what was the cause of the delay of your own knowledge?

A. I could not, no; if they would let me answer—

Q. What somebody told you?

A. I asked the voters to tell me why, and they told me—I could tell, gentlemen.

Q. Did you know of your knowledge?

A. Of course, I could not; I was fifty feet away.

Q. You as a witness here can not give the jury any light on the question of what happened inside of the precinct, or what was the cause of any particular delays?

A. I did without any interruption say that Mr. Duffy told me it was cold in there and that the clerk had complained that his fingers were very cold, and he could not write any faster. That is what he told him.

Q. That is what somebody told Mr. Duffy?

A. Yes, sir; the clerk told him.

A. As a matter of fact you don't know anything about it except what somebody told you?

A. No; you must understand we were very anxious to have the vote cast properly—

Q. Who are we?

A. Mr. Green and Mr. Rutledge and myself, because, as I said, when I began my testimony, we were there as non-partisans. We didn't intend to endeavor to have votes cast in favor of any one particular party by our efforts, and if the vote had been for Mr. Goebel, I would have been just as anxious to have that vote counted, and would have given as much assistance as I would, for Mr. Taylor, or Mr. Brown.

Q. I understood you to say that you were there for a non-partisan purpose?

A. Yes, sir.

Q. As a matter of fact, were you a non-partisan in that election, or were you assisting the candidacy of any one candidate?

A. Well, now, no, sir. To explain that, since you asked that question, I will say that I voted for Mr. Taylor and for Mr. Marshall. I voted also for Judge Breckinridge and for Wilbur Hager, and for Mr. Ion Nall.

Q. I didn't ask you for whom you voted?

A. I wanted to show you that I was acting as a non-partisan.

Q. You were, as a matter of fact interested in the success of certain candidates and interested in defeating other candidates?

A. I was very much opposed to the election of Mr. Goebel.

Q. You stated you didn't want to go there but they insisted; who do you mean by they?

A. Well, I am not sure who they were. There were two or three of the most influential members—at any rate they were members of the Honest Election League, and they were among those who were the original members—those who signed the paper first.

Q. Could you tell—can you tell the gentlemen who any of these parties were that came and insisted that you should go?

A. No, I don't think there was any coming and insisting about it at all, and I am not sure but what it was Mr. Green himself who came to me and urged that I go with him.

Q. I read you what you have stated on that subject to refresh your memory. You said, "I didn't want to go but they insisted I should." I want to know who you mean by "they?"

A. I am not sure that I could tell you. Mr. Green would tell you that he insisted, perhaps that is the only one, I am not sure.

Q. You stated you were asked to become a member of the so-called Honest Election League. Who asked you to become a member of that?

A. Well, does that make any difference, that I should answer that question to tell you who it was. Do you want to know personally?

Q. I want to know for the purposes of this case?

A. Mr. Stites asked me, I think I was in the Fidelity Trust Company office, and the paper was presented to me and I read it and expressed my approval of it, and expressed also because it was to be a non-partisan organization, and for that reason signed.

Q. You joined upon the request of Mr. John Stites?

A. Yes, sir; and others, some others that were in there, but I don't know who they were. I don't recollect. I recollect him.

Q. You said in your evidence on last evening—?

Mr. Kohn: Suggested to ask where?

A. Fidelity Trust Company office.

Q. (Mr. Phelps resumes.) You don't know who any of those were?

A. I don't recollect.

Q. You said on last evening that in your opinion if there hadn't

been any Legion there wouldn't have been as large a vote as there was. Do you know of your own personal knowledge any addition that was made to the votes on account of the Legion?

A. No, sir; do you?

Q. I do not. I think I know a great many that did not vote, as you ask me. Do you know of any?

A. Do you?

Q. I will answer any question you wish.

A. I will say you do then?

Q. Do you know of any person or persons, Mr. Pirtle, when you stated that in your opinion, there were a larger number of voters on account of the Legion, you cannot give to the commission the names of any person or persons who were induced to go and vote on account of the Legion being there?

A. Oh, no; nor could anyone else.

Q. You stated that the militia gave courage to many is the expression as I wrote it down.

A. I don't recollect as I said courage.

Q. What did you say?

A. It was the means probably of timid people going to the polls to vote who otherwise would not have voted down there if there was no Legion.

Q. Is that a guess, or do you know that fact?

A. Mr. Phelps, I have been in Louisville, I think, when there were riots, several times. I think I recognize the value of having military in the armory held subject to the civil authorities.

Q. That was not my question. My question was whether the statement you made about it giving courage or preventing intimidation of many, whether that is of your knowledge, or is an opinion of yours?

A. That is my opinion.

Q. Is it based on any facts with reference to any particular precinct or precincts?

A. No, sir.

Q. Just your own personal opinion as you entertain it?

A. It is my opinion that if a man thinks that he is safe in doing so he will go to the polls to vote, and in many instances he won't do it if he is afraid there will be a riot. Timid men won't do it, won't go to the polls.

Q. Did you know the fact that this temporary armory was by a coincidence rented on the 26th of October, just before the election?

A. I did not.

Q. Did you know the fact that on or about the 28th or 30th of the month the ammunition and supplies were put into that armory?

A. I did not.

Q. Did you know the fact that a Gatling gun or two Gatling guns were put in there the day before the election?

A. I did not.

Q. Didn't the public know of it?

A. I don't know. If I didn't know it, how would I know what the public knew.

Q. Did you not hear anything of that kind?

A. I have no recollection of hearing there was a gatling gun in there.

Q. Did you know who the person or persons were that were in charge of the militia on election day?

A. Except by hearsay. I knew Major-Col. Gray very well.

Q. You know Col. Mengel quite well.

A. I know Col. Mengel very well.

Q. You know my friend, Gov. Bradley, quite well?

A. I have the pleasure of knowing Gov. Bradley.

Q. So have I. You knew that Gov. Bradley was in the city and was personally in charge of the—

A. I didn't know that Gov. Bradley was in the city. I knew he had been there but didn't know he was in the city—well, except what I saw in the papers on Monday morning. I didn't know it up to then. I knew he had been there, but I didn't know he was still there.

Q. You gave us an opinion awhile ago. I want to suppose a case to you and ask your opinion. Suppose that the people, we will say, for instance, the Democrats who were in favor of what was called the Goebel ticket, suppose that they knew that an armory had been rented on the 26th, and that on the 28th and 30th, ammunition in large amounts, and bayonets and guns had been stored in there, and that on the day before the election two gatling guns had been put there, and that Col. Mengel who was a prominent Republican and voted the Republican ticket as against the Goebel ticket, and Gov. Bradley, who was a prominent Republican and had been making speeches for the Republican ticket, was there in charge of the militia on that day. I will ask you that if there was such a thing as timid Democrats, might they not be intimidated by the idea that the militia was there helping one side as against the other?

A. I would have a thorough contempt for myself if I were to take into consideration the fact that the Governor of the State was a Democrat or a Republican or anything else. I would assume he was doing his duty as the Governor of the State. I would not take politics into consideration at all. The military were there I would presume, to preserve order, to save property and prevent loss of lives. Politics wouldn't come into it at all.

Q. That is what you presume. You are no military man. The people who didn't understand that thing and who had the common fear of the militia, might they not be intimidated by such a thing?

A. I don't think any Democrats would be intimidated by any such means.

Q. Do you think any Republicans would?

A. A negro Republican possibly might.

Q. When they knew that the Republicans—

A. Not that, not if they thought they would be safe in going to the polls.

Q. If they thought the militia was there in charge of the Republican managers of the campaign would they be intimidated in your opinion?

A. I would assume that they had no right to do anything of the kind.

A. I only was giving you a hypothetical case?

A. I would say that a military officer's political bias should not be considered at all.

Q. And ought not to be?

A. And ought not to be.

Q. But I will ask you, if the more timid people, who didn't understand about the military, and who knew that the military was there under the control of one side to the controversy, might not be intimidated by that fact?

A. I don't see how they could be.

Q. And then another class would be given courage by the presence of the militia?

A. I think any class of men, who might otherwise feel intimidated, and kept away from the polls, would feel like going, if they were satisfied that the military would prevent any riot or disorderly conduct,—would not feel afraid to go to the polls,—because they were either Democrats or Republicans.

Q. If they were satisfied that the militia were there for the purpose of preventing it, they would not feel afraid?

A. I suppose the militia would not have any other purpose.

Q. But suppose they thought they were in the hands of partisan people, who were interested in the success of one side?

A. I can't suppose anything of that kind.

Q. Were you present at the public meeting at the board of trade, and heard the statement of the mayor?

A. Yes, sir; I was present a part of the time.

Q. Will ask you if you can state whether that meeting was not held about two weeks before the election?

A. Yes, sir.

Q. I will ask you whether or not the mayor made an open and public pledge at that meeting to secure an open and fair election?

A. I thought he did; and I was very much pleased with it.

Q. Did you hear the pledge which the chief of police gave?

A. I don't think I did. I think I saw that in the paper.

Q. Did you hear Mr. W. L. Lyons' statement?

A. Yes, sir.

Q. What was the nature of his statement, and how did it impress you?

A. I felt entirely satisfied with Mr. Lyons' statement.

Q. You know, do you not, and are you not able to state here to the gentlemen of this commission that Mr. Lyons is a man of high standing in the community?

A. I think he is a gentleman.

Q. He is president of the board of safety?

A. Yes, sir.

Q. Do you know Mr. Henry Bell?

Q. How long has he been a public official in our town?

A. A good many years.

Q. You know him pretty well?

A. Yes, sir.

Q. Did you hear his public statement there?

A. No, sir; it was made after I left.

Q. I believe you saw nothing, and know nothing that indicates any insincerity on the part of the public officials in their statements about a fair election?

A. No, sir. I will, if you will allow me, state that I read the proclamation of the mayor on Sunday preceding the election, and that gave me a great deal of uneasiness and alarm.

Q. What portion is it that alarms you?

A. The first portion.

Q. What was it?

A. Where he said it had been reported that armed men were to be on the streets at the polls.

Q. Did not he say that he would prevent armed bodies upon gathering at the polls?

A. Yes, sir.

Q. Did you not approve of that?

A. I did not believe there would be any armed bodies of men; and I did not think that he had reasonable ground to believe that. I thought I could read between the lines.

Q. If it be true that armed bodies had threatened to assemble together at the polls on election day, was not he exactly right?

A. If they were there as organized armed bodies.

Q. If anybody was contemplating it, was it not the duty of the mayor to prevent it?

A. Yes, sir; no matter who they were.

Re-examination by Colonel Breckinridge.

Q. You said something about the military being present in Louisville before; and about some riots in Louisville heretofore; do you not know that that regiment is composed altogether of citizens of Louisville or nearly so?

A. I think so, but I don't know it.

Q. So far as you know, is it not composed of young men who belong to families who live in Louisville; and who reside in the city of Louisville?

A. So far as I know they are.

Q. I will ask you whether it is not true that on former occasions the regiment has been necessary to be called out for the preservation of the peace of Louisville?

A. I know that Colonel Castleman as colonel of the Legion has always on—I saw this from his statement made—

Objected to.

Q. What do you know, from what you know of the Legion as to its being customary to assemble it at the armory on election days and on other days when there is excitement?

Objected to, because in chief. Question withdrawn.

William Harrison, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. Louisville, Ky.

Q. What is your business?

A. A printer and blank book maker.

Q. For whom do you work?

A. The Bradley & Gilbert Co.

Q. Did you or your company, or not, print any ballots for Pike county in the last election?

A. We did.

Q. What sort of paper did you use?

A. The regular ballot paper; the size was 28x42, weighing 80 pounds to the ream.

Q. How many counties did you print ballots for in this state?

A. I think about 38 or 39.

Q. Have you a list of them?

A. Yes, sir.

Q. Read it, will you please, sir?

A. Adair, Carrell, Garrard, Jessamine, Oldham, Hart, Robertson, Cumberland, Bowan, Clark, Barren, Carter, Greenup, Marion, Spencer, Pike, Wayne, Trimble, Butler, Boone, Boyd, Fulton, Harrison, Meade, Taylor, Shelby, Bath, Letcher, Monroe, Floyd, Caldwell, Grant, Henry, Muhlenberg, Allen, Whitley, Rockcastle, Clay, Lee. Thirty-nine counties in all, I believe.

Q. Did you examine that paper?

A. Yes, sir.

Q. Did you examine the ballots?

A. Partially examined the ballots in taking them off, to be sure that they were properly put together and numbered.

Q. Did you look at the ballots themselves after they were printed?

A. Yes, sir; in a certain number.

Q. Were, or not, those ballots printed in such a way that it could be seen how a man voted from the outside of the ballot after it was folded?

A. No, sir.

Q. Was this paper all of the same character?

A. The same character of paper.

Q. You have heard no complaints from any of these counties, have you or not?

A. None at all, sir.

Cross examination by Mr. Kohn.

Q. Did you or your company print the Magoffin county ballots?

A. I think not; I can't tell from memory. (After looking at list.) No, sir.

Q. Did you print the Johnson county ballots?

A. No, sir.

Q. The Knox county ballots?

A. No, sir.

Q. The Martin county ballots?

A. No, sir.

Q. Did you have any application from either of these counties to print the ballots?

A. Not that I remember.

Q. Did you have an application from Johnson county, and then afterwards notified not to print them; that they had made other arrangements about printing them?

A. I can't remember; possibly if you will tell me the clerk's name I can tell you.

Q. Do you not remember that from Johnson county you first got an order to print the ballots and then afterwards had it cancelled?

By counsel for contestee: I would like to see the order.

A. I don't remember.

Q. Did you receive any request?

Objected to; overruled.

Q. Do you remember whether or not you had any request from the county of Johnson or from the officials—the county clerk—to prepare the ballots, and then had a request not to do so afterwards?

A. I remember receiving such a communication from one clerk, but I do not remember the county.

Q. Was his name J. M. Preston?

A. No, sir.

Q. Do you know what his name was?

A. I know what the name of the gentleman was I was speaking of.

Q. What was it?

A. R. C. Minnix.

Q. I was mistaken in the county. It was Magoffin county. You were requested to prepare the Magoffin county ballots, and then requested not to?

A. Yes, sir.

Q. You did not prepare any ballots for neither of the counties I have named?

A. No, sir.

Q. Dou you know what counties, if any, actually used at the election, the ballots that you printed?

A. No.

Q. Do you know of any ballots that you printed having been actually used; or how many of them were used in any of the counties you have named?

A. I do not.

Re-examination by Governor Bradley.

Q. Have you got the order of Mr. Minnix?

A. Not with me.

Q. Have you got it up home?

A. I suppose it must be at home.

Q. Did he state his reason in it?

A. None at all.

Q. Will you file that order; send it to the chairman of the board?

A. Yes, sir.

Q. The first order and then the order countermanding that; send them both.

A. Yes, sir.

W. S. Callon, a witness called for contestee, being duly sworn and examined by Governor Bradley, deposes as follows:

Q. Where do you live?

A. Greenup, Ky.

Q. What is your business?

A. Printer.

Q. Did you print any ballots for the last election, November, 1899?

A. Yes, sir.

Q. Where did you print them.

A. Jackson, Ky.

Q. That is in Breathitt county?

A. Yes, sir.

Q. For what counties were they printed?

A. Powell, Breathitt, Wolfe.

Q. What was the character of paper upon which they were printed?

A. Very thin.

Q. Could or not, the mark of the stencil be seen from the outside of the ballot?

A. Yes, sir; I think it could.

By counsel for contestant: Where is the ballot?

Q. I will ask you if at the same time you printed those state ballots for the state ticket, whether or not you printed any ballots for any citizens' ticket—local ticket there in Powell county?

A. Yes, sir.

Q. Were those ballots, or not, priated upon the same paper?

A. Yes, sir.

Q. I will ask you if that is one of those ballots?

Objected to; sustained.

By the chairman: Gentlemen, I will have to call Mr. Finn to the chair a little while; I have not had a bite of dinner.

Q. What are your politics?

A. Democratic.

Q. What sort of a Democrat are you?

A. A silver Democrat.

Q. Are you a Goebel Democrat?

A. Yes, sir.

Q. Now, sir; I will get you to examine and see whether or not those ballots you printed—whether that is the stub books of the ballots?

A. Yes, sir.

Q. Were, or not, those ballots for the three counties, printed upon the same character of paper?

A. Yes, sir; the same paper exactly.

Q. Was there a difference in size in any of the emblems on those ballots—the squares?

A. Very little; no material difference.

Q Was or not, the log cabin larger than the rooster—the square in which it was situated?

A. Yes, sir.

Objected to; sustained.

Q. Now I will ask you to look at this ballot and see whether or not this is one of the ballots printed by you?

A. I have examined it, Governor; it is one of the ballots.

Q. Now are the ballots for the three counties all printed like that?

A. Yes, sir.

Q. In voting these ballots, Mr. Callon, could you, or not, see through them the stencil marks?

A. I did not vote one of them.

Q. That is the character of ballot, however; all like that?

A. Yes, sir.

Q. Now, Mr. Callon, did the fiscal court of Powell county refuse to pay for these ballots on account of the thinness of them?

Objected to; sustained.

Contestee excepted to the ruling, and asked time until the night meeting to prepare a written avowal, that this paper was so worthless that the court refused to pay for it.

Q. Mr. Callon, will you put some mark on that ballot; put your name on that ballot, in order to identify it?

By counsel called contestant: What county is that?

By Governor Bradley: Breathitt county.

Cross examination by Mr. Kohn.

Q. What is your name?

A. W. S. Callon.

Q. I understand you are a printer and that you printed some ballots for three counties?

A. Yes, sir.

Q. What counties?

A. Breathitt, Powell, Wolfe.

Q. You never saw one of these ballots voted?

A. No, sir.

Q. You don't know whether they were voted in the election of your own knowledge?

A. No, sir.

Q. You say they were all printed upon the same kind of paper?

A. Yes, sir.

Q. The same sized books.

A. Not exactly the same number in the books, if that is what you refer to.

Q. I mean the same sized ballots in every respect, were they?

A. Yes, sir.

Q. How many pounds paper was it?

A. I don't know, sir.

Q. You don't know how many pounds paper it was?

A. No, sir.

Q. You don't know that this stub book which is produced here is eighty pound paper?

A. I don't think so in my judgment.

Q. What is it?

A. I don't know; it was purchased in Lexington.

Q. This ballot has been used a good deal (handing witness ballot)?

A. Frayed up considerable.

Q. Do you know where that came from?

A. No, sir.

Q. Nothing on it to show that it was ever voted at an election?

A. Nothing to show that it was voted in the election.

Q. You positively state that all these ballots were alike in size, and in paper?

A. Yes, sir.

Q. The stubs were all alike?

A. Yes, sir.

Q. And these are the stubs?

A. Yes, sir.

Q. I desire these stubs filed.

By counsel for contestee: We have filed them.

Q. To whom did you deliver those ballots?

A. The Breathitt county ballots were delivered to the clerk in person; the other two counties were sent by express.

Q. Where did this ballot come from which is here now?

A. I don't know where it came from.

Q. Has not that been worn in the pocket until there are holes through it?

A. It seems to have been carried folded up until it has become frayed considerably.

Q. It is not in the condition it was?

A. No, sir.

Q. Is a good deal worn, is it not?

A. Yes, sir; a portion of it.

Q. You can carry a ballot until you wear it out?

A. I suppose so, if you carry it long enough.

Q. You don't know where this ballot came from?

A. It came from the ballot books of Breathitt county.

Q. Who handed it to you just now?

A. Governor Bradley.

Q. You don't know where he got it?

A. No, sir.

Q. Who is the clerk of Breathitt county?

A. S. S. Taulbee.

Q. Now I will ask you whether or not it is true that this ballot is not smaller than the stub book? (Attorney places ballot in the stub book and hands both to the witness.)

A. It is slightly smaller; I can't see any material difference.

Q. You did not say what pound paper it was?

A. No, sir.

Q. How long have you been a printer?

A. Thirteen years.

Q. And you don't know the character of paper on which you print ballots?

A. Yes, sir; I know the character of paper; but I could not give the exact weight.

Q. Don't you know that the paper in these stub books is what you call eighty pound paper?

A. No, sir; I don't think it is eighty pound.

Q. What do you think it is?

A. It is less than eighty pounds. I could not state how much less; considerably less.

Q. About?

A. I am hardly competent to give an answer.

Q. Don't you know this ballot produced here is less than the stub books produced?

A. I don't think it is.

Q. Don't you know it is?

A. No, sir.

Q. Less in size; could not you see that at once—folding the ballot does not make it any larger—does it shrink it to fold the ballot?

A. I don't think it would.

Q. When were you summoned to appear here?

A. The 12th I believe, was summoned to appear on the 15th.
Q. Who summoned you to appear here?
A. Joseph Johnson.
Q. What does he do?
A. I don't know what Mr. Johnson is.
Q. Is he an officer?
A. He has been in the past.
Q. Who spoke to you about this matter; who have you been talking to about this matter before you came here?
A. Major Blackburn, of Stanton, is the only one I talked to.
Q. What is his business?
A. He is a furniture man, and hotel keeper.
Q. What connection has he with the Republican party?
A. None, other than that of being a member of it.
Q. Is he a member of the Republican committee of Powell county?
A. I am not certain, sir—I do not know.
Q. You came here from Stanton?
A. Yes, sir.
Q. Who paid your fare?
A. I did.
Q. No arrangement made for the payment of it?
A. None whatever.
Q. Major Blackburn is the man who spoke to you?
A. Major Blackburn came to me.
Q. To ask you about it?
A. Yes, sir.
Q. When was that?
A. A week or so prior to the time I was summoned.
Q. Did he give you a reason why he wanted to interview you about what ballots you had printed?
A. I do not recall that he gave me any particular reason; he just asked me about the character of them.
Q. How long have you been here in Frankfort?
A. Since last Monday, the 15th.
Re-examination by Governor Bradley.
Q. I believe you said a while ago you were from Greenup county?
A. Yes, sir.
Q. Are you the same gentleman that represented that county in the Legislature a few years ago?
A. No, sir.
Q. You are related to that man?
A. He was my brother.
Q. This stub book that is produced here is from Powell county?
A. Yes, sir.
Q. And the ballot that is produced is from Breathitt.
A. Yes, sir.
Q. Did you cut this paper?

A. Yes, sir.

Q. How did you cut the paper; you say you cut it?

A. It was already cut when purchased; and when it was printed I bound the books, and then trimmed them.

Q. And then when you bound the books you cut them?

A. Yes, sir; trimmed them.

Q. Can you say that these books when you trimmed them—that you trimmed them all exactly the same?

A. No, sir; there might have been a slight variation between them.

Q. As much variation as there is between this ballot and the stub book?

A. Yes, sir; I should think so.

Re-cross-examination by Mr. Kohn:

Q. Now is it not a fact that you swore five minutes ago that they were all exactly the same?

A. Yes, sir.

Q. And were they not cut by a cutting machine?

A. Before or after they were printed?

Q. Both before and after they were printed?

A. When they were purchased they were all in similar size;

Q. Both before and after they were printed.

Q. The trimming machine, has not that got a certain gauge?

A. No, sir; not all of them; some have.

Q. Did not this machine have that gauge?

A. No, sir; I did not have a gauge of that character.

Q. What kind of a gauge?

A. Just a gauge to square them at the back; and to get a straight edge, on each edge.

G. L. Derickson, a witness called for contestee, being duly sworn, and examined by Governor Bradley, deposed as follows:

Q. Where do you live, Judge?

A. Powell county?

Q. Hold any office in that county?

A. Yes, sir; county judge.

Q. What are your politics?

A. Democrat.

Q. What sort of a Democrat?

A. Goebel Democrat.

Q. Did you see any of these ballots on the day of the election, that were voted at the last November election in your county?

A. I only saw the one I voted.

Q. Describe the ballot; was there anything about it that was peculiar—thinness of the ballot, or the paper?

A. I noticed it was thin paper.

Q. Did you notice any stencil mark on it after you folded it?

A. Yes, sir.

Q. How—from the outside of the ballot?

A. Yes, sir; one of the officers of election called my attention to it, and I noticed the cross—it was not a cross, rather a blot—seemed to be.

Q. Was there any complaint made there about the ballots that day?

A. No, sir.

Q. I mean any remarks made about their being too thin?

A. I don't know that there were any remarks about their being too thin; but some thing said about seeing how a man voted or something of that sort.

Q. Something said about seeing how people voted?

A. Yes, sir.

Cross-examination by Mr. Kohn:

Q. I understood you to say that when you voted you could see the blot through it?

A. Yes, sir.

Q. You made a blot on your paper that showed through?

A. Yes, sir; I did not make a good cross—rather a blot.

Q. You did not mean to say that the ballots you used were such that you could see how a man voted, when he properly folded and stamped his ballot?

A. No, sir; only all I saw was just the blot.

Q. You don't mean to say that when the ballot was folded it was not a secret ballot, in your county?

A. I would not have noticed it unless my attention had been called to it.

Q. Your attention was called to that blot?

A. Yes, sir.

Q. Who called your attention to that?

A. Mr. Johnson, one of the officers.

Q. What position did he occupy?

A. I think a judge of the election.

Q. Republican or Democratic judge?

A. Republican.

Q. I will ask you whether or not your attention was called to some Republicans tearing out the roosters on the ballots?

A. Yes, sir.

Objected to; objection sustained.

Re-examination by Governor Bradley:

Q. You are judge of the fiscal court of your county?

A. Yes, sir.

Q. Did you pay for those ballots after the accounts were made out?

Objected to; objection withdrawn.

A. Yes, sir.

Q. Did you pay the full amount?

A. No, sir; we cut it down a little; I forget how much.

Q. What for?

A. In one place in making out the certificate he had put "October" instead of "November;" and another thing, we thought the ballots were rather thin.

Re-cross-examination by Mr. Kohn:

Q. You thought it was thin to cut down his bill a little?

A. Yes, sir.

W. G. Frazier, a witness called for contestee, being first duly sworn and examined by Governor Bradley deposed as follows:

Q. Where do you live?

A. At Stanton, Powell county.

Q. What office do you hold up there?

A. County court clerk.

Q. What are your politics?

A. Democrat.

Q. What sort of a Democrat?

Q. Free silver Democrat.

Q. Are you a Goebel Democrat?

A. Yes, sir.

Q. A thoroughbred?

A. Yes, I suppose so.

Q. Now, sir, did you notice the ballots you had up there at the election?

A. Yes, sir; I noticed them.

Q. Were you an officer of the election?

A. No, sir.

Q. You were clerk of the court?

A. I was.

Q. And ordered these ballots?

A. I did.

Q. Tell the gentlemen over there whether or not the stencil could be seen through those ballots from the outside?

A. I think it could; I believe it could.

Q. Did you see the ballots, any of them, after they were voted?

A. No, sir; no more than a couple of ballots that were returned and defaced; I think as well as I remember we tried the stencil on the ballots after they were returned to the office. They were returned for the inspection of the grand jury?

Q. You saw two of those ballots that were returned after the grand jury took charge of them?

A. Yes, sir.

Q. You did not have any to bring with you here?

A. No, sir.

Q. Did you examine the stencil marks on those ballots?

A. Yes, sir; I think I and a couple of parties examined the ballots?

Q. What was the result of that examination?

A. You could see through the ballot after they were folded;

you could see the stamp; if you printed the stencil very light it would not show, but if you give it a hard press it would show.

Q. Were those ballots like that?

A. They resembled that.

Q. Those are your stub books there?

A. They are.

Q. I will get you to put those together and see whether one is a little broader than the other?

(The witness placed two of the stub books together and showed them to the committee, showing a difference in the length of the stub books—or the width of the ballots—of about a quarter of an inch.)

Q. Now put this one by the side and see how that sizes up?

(The witness placed another stub book by the side of the stub books already in his hands; and placed a fourth one, and exhibited all of them to the committee—showing various differences in the sizes.)

Q. Did you hear anything said on the day of the election about these ballots being thin?

A. No, sir; I did not hear anything said about it on the day of the election.

Cross-examination by Mr. Kohn:

Q. When you say this ballot (showing witness ballot filed marked with the name of W. S. Callon), resembles your ballots, you mean it is about the size of your ballots?

A. Yes, sir. I don't know exactly the size; it looks something like the ballot.

Q. The paper in the stub books represent the ballots you had?

A. Yes, sir.

Q. If I understand you, all you saw was two ballots?

A. That is all.

Q. Do you know whether they were voted?

A. Yes, sir; but not counted.

Q. They were blotted, were they not?

A. No, sir; there was no blot on them.

Q. Writing on them—what device was on them?

A. They had the Democratic device cut out.

Q. The rooster was cut out?

A. Yes, sir.

Q. It was impossible to see whether it was voted for the Democratic ticket or not; a vote for the Democratic ticket could not be shown on the ballot?

A. No, sir.

Q. You mean to say that when a person pressed hard on the stencil?

A. Yes, sir.

Q. But if properly voted—properly marked with the stencil, would it show?

A. I would not like to state that it would not show anyway.

Q. I say if properly marked?

A. If properly folded it would show through sometimes, owing to the way the stencil pressed on it.

Q. If it had been hardly pressed it would go through?

A. Yes, sir.

Q. That is simply your opinion?

A. Yes, sir.

Re-examination by Governor Bradley:

Q. It could not have been folded in that state of case so that it would not appear—the stencil?

A. Not properly.

R. F. Wright, being duly sworn and examined by Governor Bradley, deposed as follows:

Q. Mr. Wright, where do you live?

A. I live in Graves county, Mayfield.

Q. What are your politics?

A. I am a Democrat.

Q. What sort of a Democrat are you?

A. Well, I am a Brown Democrat, I voted for Brown.

Q. You are a Brown Democrat?

A. Yes, sir.

Q. Did you notice the ballots that were voted in your election?

A. I noticed one of them.

Q. Now, what was the matter with it; did you notice anything unusual about that ballot that you voted, Mr. Wright?

A. It wasn't my ballot that I voted.

Q. Well, whose was it?

A. I could not tell, sir. I was a challenger in there.

Q. Oh, you were a challenger?

A. Yes, sir.

Q. Did you notice the ballots that were being voted there that day at that precinct?

A. Only one.

Q. Well, what was the matter with that; what did you notice about it?

A. Well, one of the judges called my attention to it, as how come me to notice it.

Q. What judge was that?

A. That was Mr. Garnett.

Q. Was he a Democrat or Republican?

A. He was a Democrat.

Q. What sort of a Democrat was he?

A. Goebel Democrat.

Q. He called your attention to it?

A. Yes, sir.

Q. In what respect did he call your attention to it?

A. Well, he said he could see through them.

Q. He said you could do what?

A. He said he could tell how they were voting.

Q. Now, you have a ballot there in your hand; I will ask you, sir, whether the ballots that were voted there that day were the same sort of ballots as this?

A. It looks like it.

Q. Do you know the handwriting of the clerk?

A. No, sir; I do not. I have seen his handwriting, but I could not swear to it.

Q. What is the name of your clerk?

A. Harry Coulter.

Q. H. J. Coulter?

A. Yes, sir.

Q. Does this resemble the ballot, in all respects, that was voted there that day?

A. Yes, sir; it resembles the ballots.

Q. Do you know where that ballot came from?

A. No, sir; I do not.

Q. Now, I wish you would identify that ballot by writing your name on it.

The witness writes his name on the two pieces of the ballot, said ballot being torn in two pieces.

Q. Who printed these ballots?

A. Who printed them—I have heard, that is all. It is only hearsay.

Cross-examined by Mr. Kohn:

Q. This piece of paper that was handed you is a ballot—do you know anything at all about it?

A. Nothing at all.

Q. Do you know where it came from?

A. No, sir.

Q. Never was voted? Nothing to show that it ever had been?

A. No, sir.

Q. You don't know anything at all about this ballot?

A. No, sir.

Q. Do you know anything wrong about that ballot; ain't that eighty pound paper?

A. I don't know anything about pound paper at all.

Q. That ballot is all right, isn't it; glazed paper, isn't it?

A. I don't know about that.

Q. Now, all you know is that there was one ballot—you were acting as challenger all day, and Mr. Garnett said to you he could see through; that is right?

A. I seen through one myself.

Q. After he had called your attention to it?

A. Yes, sir.

Q. Do you know whether or not there was a blot on that ballot?

A. I do not.

Q. How was it folded?

A. It was sort of folded in that style; there was a piece tore through—it was about that way, I think.

Q. About that way?

A. Well, ain't that left out—you know there is a stub up there on it this way.

Q. Folded only one time?

A. Sir?

A. No, not quite to the top.

Q. Folded about that way, didn't you say?

A. Ain't there a piece tore off of that, the ballot?

Q. I am not asking you that; was it about in this condition?

A. I think there was a little piece there that the holes were in it; it was folded up to that.

Q. Could you see the device through that?

A. I could see the device, but could not see the emblem.

Q. You could see the device, but could not see the emblem?

A. No, sir I could not see the emblem.

Q. Could you see the rooster?

A. No, sir; I could not see the rooster, nor the log cabin, or anything like that.

Q. What could you see, then?

A. I could see the stencil mark.

Q. Oh yes; when it was held that way, you could see the stencil mark?

A. Yes, sir.

Q. On one ballot?

A. Yes, sir.

Q. And that was all you could notice?

A. Yes, sir.

Q. Was that stencil mark under the rooster or log cabin?

A. I don't know.

Q. You could not tell?

A. No, sir.

Q. Therefore, you don't know how that man voted?

A. No, sir.

Q. You don't know whether it was under the rooster, under the log cabin, or under the Democratic Honest Election ticket?

A. No, sir.

Q. All you know is that you could see a mark through it?

A. I could just see the mark through that one.

Q. And you could not tell anything about the cause of that?

A. No, sir; the judge called my attention to it.

Q. Who were you challenger for?

A. I was a Brown challenger.

Q. And you were in the polls all day?

A. No, sir, I wasn't there all day.

Q. What time did you get there?

A. I was there in the morning, and stayed until about eleven o'clock, and the sheriff of the county came and took me out.

Q. You were there until about eleven o'clock?

A. Yes, sir.

Q. And then the sheriff took you out?

A. Yes, sir.

Re-direct examination by Gov. Bradley.

Q. Now, what I want to ask you about is the folding of this ballot. As I understand you to say, it was folded up here to the perforated portion?

A. Yes, sir; that is right.

Q. And the perforated portion, or the secondary stub of the ballot, was the thing that was torn off above the fold?

A. Yes, sir.

Q. And the emblems—they were covered up?

A. Yes, sir.

Q. And it was just this secondary stub, folded up to it, in that way, up to that line?

A. Yes, sir.

Re-cross examined by Mr. Kohn.

Q. Was that secondary stub torn off?

A. Well, I suppose it was; I never noticed that.

Q. Well, do you know?

A. I noticed all of them very nearly.

Q. But on this ballot that you are talking about, was the secondary stub torn off?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Wasn't it whilst the secondary stub was being torn off that this little mark was exposed, that you saw?

A. Just hold it up; I was about as far as two feet and a half from it or two feet.

Q. It was held before you?

A. Yes, sir.

Q. And then you saw this litle mark?

A. Yes, sir.

John Ray being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live, Mr. Ray?

A. I live in Graves County, Kentucky.

Q. What are your politics?

A. I am a Democrat.

Q. What sort of a Democrat are you?

A. I am a free silver Democrat.

Q. You are a free silver Democrat?

A. Yes, sir; could not be a Goebel Democrat, because I was considered a Democrat before he was born.

Q. The reason you don't call yourself a Goebel Democrat is because you were a Democrat before Mr. Goebel was born?

A. Yes, sir.

Q. You were a Democrat from way back then? If I understand you?

A. Yes, sir; way back there.

Q. And you are a free silver Democrat, now?

A. Yes, sir.

Q. Well, sir; did you see the ballots that we used down there in Graves County at the election?

A. Yes, sir.

Q. Do you know the handwriting of Mr. Coulter, your County Clerk?

A. I think I do.

Q. Say whether this is a fac-simile of it, if you please, sir.

A. I don't know; I could not positively state that this is his handwriting.

Q. You can't say about that?

A. No, sir.

Q. Well, does that look like the ballots that you had there that day—examine it and see.

A. It is similar in appearance to the ballots that we used at the election.

Q. Did you, on that day, notice at any time, whether you could see the stencil mark from the outside of the ballot? Did you or not, on that day, see anything, or notice anything, in the voting of any of these ballots?

A. Yes, sir; I was an officer of the election.

Q. What were you; what sort of an officer?

A. I was a Judge of the election.

Q. Could you, or not, tell from any ballot which was voted, how the man voted it?

A. I did not, myself, ascertain how any man voted.

Q. Well, now; what happened with the clerk there on the day of the election, while it was going on?

A. The clerk of the election, and the judge of the election that was representing the Republican party, made some remarks in regard that the paper was too thin.

Q. Was your attention, or not, called to any stencil mark?

A. I looked at a ballot, and by placing it in a favorable light I could see the stencil mark on the ballot.

Q. What do you mean by a favorable light; just take a piece of paper now, and place it like you did the ballot?

A. The ballots were folded up to the secondary stub, and then the voters were instructed to fold them again in this way, so as to give the signature of the clerk of the election and county clerk, and after it was torn off, and after the ballot was in that shape, by put-

ting it in a favorable light, so the sun would shine on it, I could see the stencil mark on the ballot.

Q. Show us how you held it with reference to the sun?

A. I don't remember.

Q. Did you hold it up between you and the sun, or just hold it like you are holding it now?

A. I don't remember; I held it so I could see the stencil mark on one ballot, and one only, during the day.

Q. Well, how did you hold it; are you holding it now—did you hold it like you are holding that one now?

A. That is the position the ballot was folded in.

Q. Is that the position the ballot was held in, the way you are holding it now?

A. I had it in several positions, and there was only one way I could distinguish the stencil.

Q. And you don't remember which way that was?

A. No, sir; I do not, at this time. I know I got it in the most favorable position I could get it.

Q. This clerk of the election there, what were his politics?

A. He was a Democrat.

Q. What is his name?

A. L. H. Hamilton.

Q. Was he a Goebel Democrat?

A. Well, he was a regular Democrat.

Q. A regular Democrat?

A. I suppose he voted for Mr. Goebel; I don't know.

Q. What did the Clerk say to you; let me see now if I got all of that. Did the Clerk say anything to you at that time, and during the election, or in your presence and hearing there, while you were acting officially, in the booth—did he say anything about men voting—Democrats voting against Goebel?

Objected to as leading.

Q. I will ask you if the clerk didn't say to you, sitting there where you were taking that vote, "that there are a whole lot of these Democrats here that are voting for Goebel and I can tell by examining these ballots?"

A. He did not.

Q. Now, I will ask you this question; did the clerk say anything about the Democrats there voting for one man on the Democratic ticket and not voting for the others, which he discovered from the ballots?

A. I think not, sir.

Q. Did he say that they were voting for Goebel, and not voting the rest of the ticket—Democratic ticket?

A. Not while the election was in progress.

Q. Never said that?

A. No, sir.

J. H. Happy, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you reside, Mr. Happy?

A. Mayfield.

Q. Were you at your voting place there at the last November election?

A. Yes, sir; I was an inspector in the first ward of Mayfield.

Q. You were not in the booth, of course, before—

A. I voted.

Q. Did you notice anything about the texture of the ballots that day?

A. Yes, sir; they were thin.

Q. State what you noticed, and under what circumstances you noticed it, and all about it.

A. They were very thin, and I noticed my own vote; I could tell how I voted it.

Q. When could you tell?

A. There in the booth.

Q. Before or after you had folded the ballot.

Q. Now, did you notice from the way or manner in which the ballot was folded, how the voter had cast his vote, without unfolding the ballot after voting other than your own vote?

A. No, sir; I did in counting it.

Q. Explain that to the committee?

A. In counting it, the two judges, one of them would take it out, and the other one was sitting there beside him, and they would say, "This is yours, and that one is yours."

Q. When did they do that, before they had unfolded them?

A. Yes, sir; before they unfolded it.

Q. Do I understand you to say that they could ascertain the manner in which the voter voted, before they unfolded the ballot, or afterwards?

A. It was before they unfolded the ballots; they could ascertain every one of them.

Q. Do you know whether this was one of the ballots that was used at that election, or not?

A. Yes, sir; I recognize it from the handwriting of the clerk.

Q. You know Mr. Coulter's handwriting and recognized it as one of the ballots used in Graves county at that election?

A. It was one signed by him, and like the ballots that were used there.

Q. Do you know where they were printed?

A. Yes, sir; Mr. Beaumont printed them; that is, he told me he did.

Q. Where does Mr. Beaumont live?

A. He lives at Mayfield.

Cross-examined by Mr. Phelps:

Q. Mr. Happy, you were the Republican representative there?

A. Yes, sir; I was the Republican inspector.

Q. Are you a Republican?

A. Yes, sir.

Q. A Taylor Republican, or Brown Republican?

A. I am any kind of a Republican that is the nominee.

Q. Who was this officer that told you he could tell every ballot as it came out?

A. Well I don't know as he told me that he could tell every ballot, but I sat there and I would hear them say, "This one is Republican, and that one is a Democrat," as they took them out, before they opened them.

Q. You undertake to swear here that every ballot taken out of that box, without being opened, was announced before it was opened by the officers, whether it was Republican or Democrat?

A. No, sir; I said it could be.

Q. And you are giving an opinion what could be, and not a fact—what was?

A. There was a great many of them that was announced that way.

Q. Then this that you have given to the gentlemen of the commission is not a fact known to you but an opinion you have?

A. Oh no, not every one of them wasn't.

Q. Now, the one you saw, and the only one, was the one you voted?

A. I saw a good many of them as they were taken out of the box.

Q. How many did you see?

A. Oh, twenty, thirty or forty.

Q. Twenty, thirty or forty?

A. Yes, sir.

Q. In whose presence did you see them.

A. In the presence of the election officers and the Democratic inspector.

Q. And what did you see on them?

A. I would see where the stencil mark was.

Q. Did you see how they voted?

A. Yes, sir; if it was under the Democratic ticket I would see it; or if it was under the Republican, or Prohibition or Brown ticket.

Q. Without being opened?

A. Yes, sir.

Q. What other officers saw them besides you?

A. All of them.

Q. All of them?

A. Yes, sir; Mr. Boes.

Q. Mr. Ray, that was just on the stand?

A. No, sir; he is not in our precinct. Mr. Normand.

Q. Who else?

A. And Mr. Ridgeway and Mr. Orr.

Q. Now, I will ask you if you didn't state in that precinct, after the polls closed, and after the counting was over, that the precinct went within five of the number that you had expected and calculated?

A. Yes, sir.

Q. Didn't you state that in the presence of Mr. Ridgeway?

A. Yes, sir.

Q. That you had polled the precinct, and that it came within five of the number that you had polled?

A. I don't think there was a particle of interference in that precinct, in one way or another.

Q. Now, you say, in the booth, that you saw how your ballot was?

A. Yes, sir.

Q. I will ask you whether that booth was a box entirely enclosed?

A. It was enclosed on the sides; up above it wasn't.

Q. Well, it was enclosed on all four sides?

A. Yes, sir.

Q. Any light in there?

A. The light that came down from the top.

Q. From the top of what?

A. The top of the booth.

Q. Well, was that in a room with a ceiling to it?

A. Yes, sir; in the court house room.

Q. And you undertake to tell the gentlemen of this commission that a ballot of this kind, and texture, after being folded, you could distinguish inside of a booth, in the darkness of that booth, under which emblem it was voted?

A. I saw how I voted; yes, sir.

Q. Do you swear that this is the quality of paper?

A. Yes, sir.

Q. And you swear that in quality of paper of that kind, inside of a closed booth, that a man after folding it, could tell where the vote was?

A. It was closed around; it wasn't closed up above.

Q. It was about six or eight feet high?

A. Yes, sir.

Q. And entirely enclosed?

A. Yes, sir; it was only folded once.

Q. Will you show them exactly how you had it folded?

A. I forget now. I folded it just exactly as the judges told me to fold it, but I forget exactly how it was folded. I think it was just folded this way—they instructed me how; I think that is the way it was folded.

Q. Just one fold?

A. Yes, sir; I think that is the way it was folded.

Q. And inside the booth you saw it?

A. Yes, sir.

Q. And you now state, under oath, that a ballot of that texture could be seen inside of a booth—you saw it?

A. I stated that I seen it.

Re-direct examination by Mr. Sweeney.

Q. You were asked the question, whether or not at the last election you were a Brown Republican; I will ask you the question whether or not in 1896, you were a Palmer and Buckner Republican.

A. I was just simply a plain Republican; been that all may life.

L. Brewer, being duly sworn and examined by Judge Yost, deposed as follows:

A. Where do you live?

A. In Graves county.

Q. In what precinct?

A. Panther Creek precinct.

Q. Where you present at the late election in November last?

A. Yes, sir; the whole day.

Q. Were you an officer of election, Mr. Brewer?

A. Yes, sir.

Q. Mr. Brewer, you say you were an officer of election?

A. Yes, sir.

Q. What position did you hold?

A. I was one of the judges of the election.

Q. What are your politics?

A. I am a Republican.

Q. You were a Republican judge at the election that day?

A. Yes, sir.

Q. Did you notice, at any time during the day, in any way, the texture of the ballots used by the voters in that precinct?

A. Yes, sir.

Q. What was it?

A. Very thin, I thought.

Q. Could you ascertain how the voter had cast his vote after the ballot had been properly voted?

A. Yes, sir; I could tell how nearly every man voted in my precinct that day.

Q. What was the clerk of the election—Republican or Democrat?

A. He was a Democrat.

Q. State whether or not the clerk said anything to you, or to the other officers of the election in your presence, that would show that he could ascertain how the voter had cast his vote, when the ballot was properly folded, and if he did, tell the board what he said?

A. I noticed the first ballot that came back; it was handed to me; how the man voted, but I never said anything about it at all until eight or nine o'clock in the day; but I handled most of the ballots and put them in the box; but I was seeing how every man

voted through the paper, or nearly every one, and up about eight or nine o'clock in the day the clerk—they sat five or six feet from me, said to the Democratic judge, "I see lots of voting in the little square opposite Goebel's name, who think they are voting the whole ticket; you instruct them how to vote;" and from that time on the judge instructed them how to vote, he took pains to show every man that would let him how to vote the ticket.

Q. (By Col. Breckinridge). Did you notice after that that a change was made by the voter?

A. Yes, sir; there was fourteen men in all that voted in the little square opposite Goebel's name, and the clerk said he had been noticing it, and called the attention of the Democratic judge to that fact.

Q. After that they changed—the Democratic voters changed, putting the stencil mark under the device?

A. Yes, sir; I never noticed nary 'nother one after that.

Cross-examined by Mr. James.

Q. How were these ballots folded?

A. Well, the most of them were folded once.

Q. Folded one time?

A. Yes, sir.

Q. You were a judge of the election, you say?

A. Yes, sir.

Q. Was that your idea of how ballots should be folded?

A. That was the way the clerk broke them for the voters and instructed them how to fold it.

Q. You were there and acquiesced in that, didn't you?

A. Yes, sir.

Q. That was the proper way to fold a ballot?

A. I didn't think so.

Q. Why didn't you object, if you didn't think so?

A. I don't know but what I did.

Q. Well, did you?

A. He stated that was the proper way, and we did tell some voters how to fold the ballots—I did, and they would always come back in such a shape I could not tear that stub off.

Q. Now, when this man said he noticed some of them were voting opposite the name of Mr. Goebel, did he say from what he observed that?

A. He says, "I see"—Mr. Ray said, "How do you know?"

Q. He said, "I see," but did he say from what he saw? You say he said, "I see"—he didn't say, "I see from the ballot," did he?

A. Yes, sir.

Q. Did he say "I see by looking through the ballot?"

A. Yes; when the judge said "how do you know," he said "I can see how every man votes from here."

Q. That is, looking in the booth?

A. No, sir; he was sitting at one end of the table, and I was at the other end.

Q. He never handled that ballot any more; you deposited the ballots, you were the judge?

A. Yes, sir; I tore the stub off, and put the ballot in the box.

Q. Do you mean to be understood by these committees, that that clerk sat there and saw the men that came out of the booth with the ballot, could see from where he was how the men voted?

A. He said so, whether he could, or not, I don't know.

Q. Do you mean to be understood as saying that he could see through the ballot after it was folded?

A. Yes, sir.

Q. And you say to the committee that is the sort of a ballot that was used?

A. That looks right smart like it.

Q. Well, how near like it?

A. Well, I could not say.

Q. Sir?

A. I could not say how near.

Q. You are not prepared to say that that is the sort of ballot used there?

A. It looks like it; as near as I can tell, it is.

Q. Now, who was the other judge there?

A. Mr. Ray.

Q. Mr. Ray, who just testified?

A. Yes, sir.

Q. Put on the stand by your side?

A. Yes, sir; I suppose so.

Q. How close was he?

A. Well, he was closer to the clerk than I was; he sat rather by his side, and I on the opposite end of the table that the clerk wrote on.

Q. You were in the room when you heard him testify?

A. Yes, sir.

Q. You heard what he said?

A. Yes, sir.

Q. You heard him say that he had to hold that ballot up in the most favorable light to see the stencil mark on it?

A. Yes, sir.

Q. And yet you mean to say that the clerk sat four or five feet over there when the ballot was handed to you, and could see the stencil mark through the ballot?

A. He said he saw it.

Q. What is the name of that clerk?

A. Hamilton.

Q. What is his full name?

A. L. B. Hamilton we call him Louie Hamilton.

Q. Republican or Democrat?

A. A Democrat.

Q. The sheriff—what is his politics?

A. He is a Republican.

Q. Then the Republicans had the sheriff in that Graves County precinct?

A. I understand he was a Republican. This time about three years ago I suppose he was not; I understood he voted for Bryan three years ago.

Q. You don't know how he voted?

A. I don't know his politics at all then; I take his word for it.

Q. Was he for Taylor?

A. Yes, sir.

Q. You don't object to that sort of a man being sheriff of an election, do you?

A. I didn't say I did.

Q. Do you say that that ballot that you saw and observed there, was thinner or thicker than this ballot presented to you?

A. It seems to me like it was thinner.

Q. It seems to you like it was thinner?

A. Yes, sir.

Q. Then the exhibit filed here by the contestee is not a correct one, according to your idea?

A. I could not say.

J. W. Green, being duly sworn and examined by Judge Yost, deposed as follows:

Q. What is your name, Mr. Green?

A. My name is J. W. Green.

Q. Where do you live?

A. In Mayfield.

Q. In what precinct do you vote?

A. I vote in the second ward in Mayfield.

Q. Were you at the last November election?

A. I was, yes, sir.

Q. An officer of the election?

A. Yes, sir.

Q. In what capacity did you serve?

A. As a clerk.

Q. Did you notice during the day the texture of the ballots?

A. Yes, sir.

Q. What was it?

A. Well, sir; it was thin enough that I could notice how the man was voting.

Q. How many ballots did you notice in that way, that you could tell how the man voted?

A. I could not tell you exactly; it was going on all day long there; some we noticed, and some we didn't.

Q. If there was any comment made by the officers of election

on the thinness of the ballots, and the fact that they were so thin that the manner in which the voter had cast his vote could be ascertained, when it was folded, tell the committee what was said.

A. The judges were speaking there several times that day, about the ballots, how thin they were, and all about it, and Mr. Ed. Coulter was the Democratic challenger, he came from another ward, was sent there to challenge in our ward, and he said that there was eight or ten negroes that promised to vote the Democratic ticket there that day, and he was sitting—

Objected to, overruled and exception.

Q. Go on with your negro story, Mr. Green; I like that.

A. Mr. Coulter was sitting upon a base shelf, that was right against the wall, and my desk was right against him, and the Republican judge was sitting over at the end of the desk, right under Mr. Coulter, and he folded the ballots there right where Mr. Coulter was sitting, where he could see every one that was folded, and he made the statement that there were eight or ten negroes that had promised to vote the Democratic ticket there, and nary one of which had done it yet, and he didn't think there was a negro that would vote the Democratic ticket without it was a dead one.

Q. How could you tell whether they were voting that way or not, Mr. Green?

A. When you folded the ballot, you could lay the ballot on the table, and by him sitting up there—the instructions of the judge there that day was for me to instruct the voters to fold the ballots one time; I don't know whether that was correct or not, but they they told me to instruct the voters to fold the ballots one time. I folded it up to the perforated place where we were to tear it off, and that is the way I was instructed to deliver them.

Q. You started to answer, when you laid the ballot down here—what?

A. He could see whether he voted the Democratic ticket, and when folded over here, he could see whether it was voted the Democratic way.

Q. How could he see?

A. He could see the ballot, I reckon.

Q. By the stencil mark showing through the ballot?

A. Yes, sir.

Objected to.

A. He could see the stencil mark through the ballot when it was laid down that way.

Cross examined by Mr. Kohn.

Q. Only in a certain way, you state?

A. Yes, sir.

Q. What you mean is, he laid down the ballot on the desk?

A. Yes, sir.

Q. Where was he sitting, above?

A. Mr. Coulter?

Q. Yes, sir.

A. Yes, sir; there was a row of shelving right along the wall; the house we held the election in had been a drug store, and there was a row of shelving there, and I think there was a base shelf, that came out there and he was sitting on that shelf with his foot on this table where I was doing the writing; and the Republican judge was sitting at the end of the table, and like this is the table, Mr. Coulter was sitting right up there.

Q. And then when he would take the secondary stub off, he would fold it in such a way that he could see how the man voted?

A. Yes, sir.

Q. Either lifting up one end, or the other end?

A. Yes, sir.

Q. Were you a Republican officer there?

A. Yes, sir.

Q. What officer?

A. Clerk.

Q. You were the Republican clerk?

A. Yes, sir.

Wm. C. Carrico, a witness, being duly sworn and examined by Judge Yost, testified as follows:

Q. Where do you live?

A. Fancy Farm Precinct, Graves county.

Q. Were you there at the November election last?

A. Yes, sir.

Q. As your polling place?

A. Yes, sir.

Q. Where is that?

A. Fancy Farm.

Q. Did you notice the texture of the ballots on this day?

A. I did.

Q. What was the texture?

A. Thin.

Q. How thin?

A. So thin that when we were to count the vote, the Democratic judge, my partner, I was a judge of that election, he was sitting to my left, taking them out of the ballot box—drew them out, folded up, and gave them to me to give to the clerk to take the count, when it would be for Goebel, he would halloo, and when it did not, he would not. We just counted them that way.

Q. What was the condition of the ballots that time, folded properly?

A. Folded properly.

Q. When the ballot was folded properly, you could tell how the ballot was voted?

A. Yes, sir, see the stencil.

Q. See the stencil through?

A. Yes, sir.

Q. Was there anything said by any of the officers of the election while the vote was being cast that would indicate that they could tell how the votes of the voters were cast, if so, what was said?

A. I never heard anything of the kind that would indicate that they noticed it.

Q. Did you notice any yourself?

A. No sir.

Q. Not until the count began?

A. No, sir; except my own, I seen that when I voted.

Cross-examination by Mr. Kohn.

Q. What is your name?

A. Wm. C. Carrico.

Q. You were the Republican judge?

A. Yes, sir.

Q. And what was the name of the precinct?

A. Fancy Farm.

Q. Fancy Farm precinct?

A. Yes, sir.

Q. You say throughout the day you say nothing or heard nothing to indicate that these ballots could be seen through, except your own ballot?

A. My own vote.

Q. When you went in there to vote, you say after you folded your ballot you could see the stencil mark, I believe you say?

A. I did.

A. Did you blot it?

A. No.

Q. Was there glazed paper, the paper that was used there, the ballots?

A. I can't say that I noticed it being glazed, it was very thin paper.

Q. Paper like that?

A. I can't tell from here.

Judge Yost: There is another half of that ballot?

A. Yes, I know there is.

Mr. Kohn: Take this and see the size of it?

A. I believe that is the way, it was; no—

Q. I didn't ask you about the size of it. I asked you about the character of the paper?

A. Fully that thin, if not thinner.

Q. Which do you say, as thin or thinner?

A. I will say it was as thin.

Q. Now you were the Republican judge there?

A. I was.

Q. Who was the Democratic judge?

A. J. M. Carrico.

Q. Your brother?

A. A cousin of mine.

Q. He lives at the same precinct?
A. Same precinct.
Q. Who was sheriff?
A. C. M. Bright.
Q. Republican or Democrat?
A. He was a Democrat.
Q. Who was the clerk?
A. An uncle of mine, E. C. Willett, the Republican clerk.
Q. The whole family was there?
A. The whole family, a family affair; we naturally had a good time.
Q. You say that when you got there and went to counting the vote that the Democratic judge called your attention to the fact you could see through the ballots?
A. Yes, sir; we naturally had lots of fun over it; we didn't think anything of this was to take place; we just noticed it, and that is the way it had taken place.
Q. Was that at night when you counted the ballots?
A. Yes, sir.
Q. Can you tell from this side of the ballot—I show you the ballot now, and with the face of the Prohibition and Socialist and Labor emblem; see if you can tell what is on the reverse side without looking at the reverse side of the ballot?
A. The hammer—is that what you mean by the Labor?
Q. Read what is on the other side of that paper without turning it over to look at it, you say you can see through it, I want you to tell me what you can see?
A. It seems like I can see some marks, reading or signature, or something, I can't read it, I can see nothing; if it was a stencil I could tell, whether it was voted or not, I can tell by the mark there.
Q. That is all that you can see on that, isn't it, and yet there is a whole line written on the back of the ballot?
A. Yes, it looks like a lot of writing to me.
Q. Two lines written there, ain't there?
A. Yes, I said I could see like there was some person's name or something, I couldn't tell—
Q. Who was there at the time you say that this discovery was made besides yourself and your cousins?
A. Well, I had two cousins in there.
Q. Anybody else?
A. I had two or three cousins in there to help me. Different names. Elliott, for one, and Willett, F. E. K. Willett.
Q. Two cousins—three cousins, anybody else?
A. The whole family in there.
Q. All of them in there, how many were in there altogether?
A. We were representative all around of Brown, inspectors and challengers, and also the Goebel and Taylor side.

Q. How many did you have Republicans for Taylor?
A. We just had our quota, two of each.
Q. How many did you have for Brown?
A. Just one, he acted as challenger and inspector, too; stayed there all day.
Q. He was there all day and all night until it was over?
A. Yes, sir; he had his credentials to that effect and he stayed.
Q. All of these uncles and cousins and brothers-in-law were there?
A. Yes, sir.
Q. It was a regular picnic altogether?
A. Nice time; yes, sir.
Q. Just as a matter of information, that went Republican, didn't it, that precinct?
A. No, sir.
Q. It went Democratic?
A. It went Democratic.
Q. In spite of all that, it went Democratic?
A. It went Democratic; just a general good time we had.
Q. It is a Democratic precinct generally, isn't it?
A. Yes, sir.
Q. Fell off a good deal during this election, didn't it?
A. Yes, sir.
Q. Were there anybody outside of your family at all at that precinct?
A. I suppose so. I seen a man there that I didn't claim any relation to, blood relation.
Q. At the time of the count?
A. No, I reckon not. I reckon we were all kinfolks. They claimed a kin with me anyway.
Q. Any of them here of these blood relations?
A. No, sir; there isn't anybody but me here.
Q. You are the only one of the family here?
A. Yes, sir.
Q. Who was the Brown inspector there?
A. C. V. Elliott, I think, if I recollect right.
Q. Who was the Republican inspector?
A. W. O. Ballard was the inspector. He was either inspector or challenger, one.
Q. Was he related to you too?
A. Yes, sir.
Q. How?
A. By marriage.
Q. What relation was he?
A. He married a double cousin of mine.
Q. He is a double cousin by marriage?
A. Yes, sir.

Q. Who was the Democratic inspector, see if we can get somebody that was not related?

A. A man by the name of Eugene Willett.

A. Is he related?

A. He is a double cousin too. He is a single cousin. I will take that back. I will just let you know the fact of them.

Q. Well, now, let's see, the Democratic challenger, who was he?

A. That was Carrico.

Q. That is your—?

A. Double cousin. All kin folks down there. Mr. Anderson knows all of them. He is acquainted.

Q. He was not there, no?

A. No, I didn't see him.

S. F. Key, a witness, being duly sworn and examined by Judge Yost, testified as follows:

Q. Where do you live?

A. I live in Mayfield, Graves county.

Q. What precinct are you a resident of and voter of?

A. I think it is the third.

Q. Third ward?

A. Third ward.

Q. Were you during the day of the last election?

A. Yes, sir.

Q. An officer in any capacity?

A. Yes, sir; judge.

Q. Did you during the casting of the vote or its counting notice the texture of the ballots used in that precinct?

A. Yes, sir.

Q. What was it?

A. Well, they were thin.

Q. How thin?

A. Thin enough to see through them.

Q. If any of the officers of election during the day said anything that would indicate that they could tell when the ballot was properly voted how the vote of the voter had been cast, tell the committee what was said?

A. We talked about it, I think all of the officers and inspectors, all agreed that they could see through it, said that they could see how a man voted.

Q. Was that during the day?

A. Yes, sir. In the early part of the day.

Q. Did you see yourself any votes that you could tell how the votes had been cast when they had been folded?

A. Yes, sir.

Q. Do you know Mr. Coulter's signature, the clerk of the county court?

A. I don't believe I would know it.

Q. Here is a ballot which purports to be a ballot of that

county. See if you think that is what was used there that day?

A. I couldn't tell by looking at this. I couldn't tell by looking at that.

Cross-examination by Mr. Kohn:

Q. Can you take that ballot and read the reverse side of it now?

A. I don't know whether I could or not.

Q. I mean when it was folded, doubled or—

A. I could show you just how our ballots were folded. Here is the way our ballots were folded, right that way. The Democratic judge folded the ballots and handed them to them and they handed them to me, and I folded them and dropped them in the ballot box. And when they would get loose that way, and the light would come on it, you could see through the device.

Q. When they were lifted up?

A. No, when they would get apart; if they kept right close together you couldn't see it, but if they got apart, you could see through them.

Q. You can't see through that and tell what is on the other side here, never mind turning it over. You can't see through that?

A. You can't of a night, I don't know what you can of a daytime.

Q. I thought you were acting as inspector.

A. I was there daytime.

Q. Didn't you say you were inspector, and that the inspectors said they could see it?

A. They all decided they could see through the ballots.

Q. You mean when they were separated singly, you could see it, in other words, just as you indicated there, when they went to work to tear off the stub lift it up in that way, they could see through it?

A. No, sir; I said when the light got in between them.

Q. But you couldn't see through it when it was folded?

A. I don't know whether you could or not. I didn't look at them that way. I had them down on the table, folded that way.

Q. When the light went in between, you could see?

A. In folding, I could see through them.

Q. That is the only way it could be seen through?

J. M. Carmen, a witness, being duly sworn, and examined by Judge Yost, testified as follows:

Q. Where do you live?

A. I live in Graves county.

Q. In what precinct do you vote?

A. I vote in Nichols.

Q. Were you at your voting place on the day of the last November election; if so, in what capacity?

A. Yes, sir; I was there, and acted as clerk.

Q. What are your politics?

A. Republican.

Q. You acted as the Republican clerk of that precinct?

A. Yes, sir.

Q. I will ask you to state whether during the casting of the vote or its counting, after the polls had been closed, your attention was called to the texture of the ballots used by the voters used in that precinct?

A. Yes, sir.

Q. What was it?

A. Well, they could be seen through. I couldn't tell as to the thickness of the ballot.

Q. You mean to say it was thin enough to see how the voter voted?

Objected to.

Q. When it was folded in what position?

Objected to.

Q. I will ask you state whether if any of the judges or officers of election said anything during the day to you or in your presence that would indicate that they could tell how the voters had cast their votes after the ballots had been properly folded?

A. Yes, sir; after they had been returned; really, I couldn't state just in what way they were folded; whether they were properly folded or not.

Q. Show the board how thew were folded.

A. Why, my attention was called to the fact that they could be seen through, one of the judges said they could be seen through, and I noticed.

Q. How was the ballot that you noticed folded when you saw through it?

A. I couldn't tell.

Q. You don't know how it was folded?

A. No, sir.

Cross-examined by Mr. Kohn.

Q. You don't know whether it was folded or not, do you?

A. I think it was folded.

Q. Only one ballot that you saw?

A. I seen more than one.

Q. I mean that you could see through?

A. No; I seen more than one that I could see through.

Q. Was the light shining on that?

A. I couldn't tell.

Q. And between the folds?

A. They were instructed to fold them as the clerk gave them to them; but I couldn't tell you just how that was.

Q. You don't know how that was done—who was it said they had seen through them?

A. The judge.

Q. You don't know how he happened to take the peep, do you?
A. No, sir.
Q. What was the name of the judge?
A. Mr. Garnett—E. L. Garnett.
Q. The Democratic judge?
A. Yes, sir.
Q. Who else was there?
A. Well, there was myself and E. L. Garnett.
Q. You were the Republican judge?
A. Yes, sir; clerk. H. D. Carmen, was the Republican judge and Ed. Crossland was the Democratic inspector
Q. Was the clerk your brother?
A. No, sir.
Q. Relation of yours?
A. Yes, sir; he is a counsin of mine—second cousin.
Q. And the only thing that you noticed, this judge spoke to you at one time, Mr. Garnett, and said he could see—saw how the vote had been cast?
A. I don't know that he spoke to me. He spoke and got my attention by his talking of that.
Q. What was it that he said?
A. He said he could tell how they voted through the ballots.
Q. How did he manage to see, do you know?
A. No, sir.
Q. Then you don't know what caused him to know?
A. Well, I know how I could tell.
Q. How did you tell?
A. By seeing.
Q. What ballot did you see? The one that you voted?
A. I couldn't state. I did see my own; yes, sir.
Q. Did you blot that?
A. Why, I think not; I couldn't state though, positively.
Q. You don't know whether you did or not?
A. No, sir; I do not.
Q. Isn't it a fact you don't know whether the ballot was folded at all or not when it was returned, do you?
A. I think it was.
Q. But you don't know?
A. No, sir.
Q. And you don't know whether or not, if it was folded, whether by the paper giving away, and the light shining between the two, that you could see the ballot as it was marked?
A. No, sir; I couldn't tell.
Q. You don't know whether that was the case or not?
A. I couldn't state.

P. D. Carmen, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live?

A. I live three miles west of Mayfield.

Q. In Graves county?

A. Yes, sir.

Q. Were you present at your voting pace at the last November election?

A. Yes, sir.

Q. If you were an officer, state in what capacity you served?

A. Judge.

Q. What are your politics?

A. Republican.

Q. You were the Republican judge at that precinct; was your attention called to the texture of the ballots that were used by the voters that day?

A. Yes, sir.

Q. Either during the casting of the vote or its counting?

A. Yes, sir.

Q. What was its texture?

A. It was thin, the texture was thin.

Q. If the officers of the election said anything to you in your precinct during the day that would indicate that they could tell after a ballot had been folded, how the voter had cast his vote; tell the board there what they said?

A. Mr. Garnett was one of the judges—E. L. Garnett. He is the one that called my attention to it.

Q. What did he say that called your attention to it?

A. He laughed, said these ballots are thin; a body can see through it and see how a man votes.

Cross examined by Mr. Kohn.

Q. You didn't see it yourself?

A. No, sir.

Q. All you know is what Mr. Garnett said?

A. Yes, sir.

Q. You don't know how he saw it?

A. No, sir.

Q. You don't know whether that ballot was folded or not?

A. Yes, sir.

Q. Did you see the ballot folded?

A. The ballots came through my hands before the went into the box.

Q. How was it when it got to Garnett's hands?

A. I don't know.

Q. You don't know what caused him to see it?

A. No, sir.

Q. Wasn't Mr. Garnett here as a witness in this case with you; haven't you seen him here in Frankfort?

A. He was here.

Q. They released him and sent him home? He ain't here now?

A. Not here, I don't think now.

Q. He is the man that you heard make the statement that you have referred to here, and you don't know what caused him to see the ballot?

Giles Goff, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you reside?

A. In Graves county.

Q. What is your given name?

A. G. G.

Q. In what precinct do you vote?

A. Clusterman's Barn.

Q. Were you present at the voting place last November election?

A. Yes, sir.

Q. Did you serve in any official capacity?

A. As judge of the election.

Q. What were your politics?

A. Republican.

Q. Was your attention called to the texture of the ballots used by the voters there that day?

A. Yes, sir.

Q. What was it?

A. Well, I will tell you just how it came up. About the third or fourth man that voted came out of the booth with his ballot unfolded, didn't fold it up. I never noticed it, when he came around, the Democratic judge was over on that side of the booth, and handed it to him, the clerk seen it and he said "don't put that in, you fetched it here without folding it; and he jerked the string off of it and just wadded it up and put it in in spite of him, the Democratic judge wouldn't let him have it. We had a laugh over it, and the sheriff of election was standing there. Directly there was another man or two voted. Another one came walking around with a ballot doubled up in his hand, doubled this way, with the strip hanging over, and I seen how he voted, and the sheriff seen how he voted, and he winked at me, and says, "them is too thin, we can see through them," and we went to change the booths, turned it around to keep the light off of them so we couldn't see through them, but we couldn't do it. They doubled it up some way, when they came to us; one side we could not see it, but when it came on the other side we could see through it, but when it was this way, we couldn't see through it, and every time they handed it to us we could see if we wanted to. I never noticed but how one or two men voted.

Q. If anything was said by anybody else, state it?

A. We all talked about it off and on during the day.

Cross examined by Mr. James.

Q. What precinct do you say you were a judge of?

A. Clusterman's Barn.

Q. You saw a ballot in there just like you indicated with that piece of paper?

A. Which one are you speaking of?

Q. The first one you saw.

A. Yes, sir; it came in doubled up, the first one I seen that was doubled.

Q. Didn't you state a moment ago that it was open there so the perforated stub could be seen—torn off, that is the way you saw that?

A. The first one I did.

Q. That is to say, you saw the first one?

A. The first one it was not doubled at all. That was the one the clerk told him not to put in, it was not lawful to fetch it back not doubled, it was not doubled at all.

Q. Isn't it true that if the ballots—if you gentleman as the election officers, had directed these voters to fold the ballots properly as required by law, that you could not have seen through the ballots?

A. No sir.

Q. You could not observe how a man voted?

A. They could not have folded them without seeing through them.

Q. You said where they folded once you could see on the side turned next to you?

A. There was one side of it that was, the voting was all done underneath one side of the paper; the other side was two doubled, and that was only one—

Q. If it had been doubled correctly, folded properly, you couldn't have seen it?

A. Yes, sir; you could have seen it.

Q. Did you see any of them that way?

A. Yes, sir; lots of them.

Q. Show the gentlemen how they were folded?

A. They were about the size of that. They were folded here this way, I think, I won't say positively, but then they were doubled twice some way, and this lapped over far enough over here for the stub to be torn off.

Q. And that was the way you had them folded?

A. I think so, I wouldn't say.

Q. Who did you first talk to, tell about these thin ballots there?

A. At the election?

Q. No, any time after that?

A. I can't tell you positively who it was I talked to about it. They brought up the question some time after that at Mayfield, I believe I was there on a jury, they got up a question about the thin ballots, talking about the thin ballots, and I told them that ours was as thin as any of them, I suppose as I seen how lots of the men voted.

Q. Who was it that you first told that?

A. I don't know who I first told that to. I saw a great many men there.

Q. Will you tell us the name of the Democratic officer in that booth there to whom we have been referring?

A. Yes, sir.

Q. What was his name?

A. You want what?

Q. I want the name of the man.

A. His name was Albritten.

Q. Can't you give the name of the first gentleman to whom you first talked about this matter?

A. I don't expect I can.

Q. Ain't it a fact that the way your attention was first called to 't was that some Republican in Graves county came to you and got to talking to you about these being thin ballots and that you were wanted to be here as a witness, and that is how you came to think of their being thin?

A. No, sir; it was some time before ever—I didn't know I was wanted here as a witness about it until last Thursday morning.

Q. Did you come from Louisville here?

A. I come from Mayfield here.

Q. How did you come—which route?

A. I came from Mayfield to Louisville and from Louisville here.

Q. How? which route did you come?

A. Come on there—I came down by Paducah, and from Paducah up to Louisville, and from Louisville here.

Q. You have transportation furnished to you from Louisville here?

A. We got tickets.

Q. Got tickets—who from?

A. At Mayfield to come to Frankfort.

Q. Who from? Who furnished you the tickets?

A. The depot agent.

Q. Who paid for them?

A. I paid it out of my own pocket.

Q. Who is paying your expenses here?

A. Paying my own expenses

E. L. Garnett, a witness, being duly sworn and examined by Judge Yost, testified as follows:

Q. Where do you live?

A. I live in Graves county.

Q. In what precinct do you vote?

A. I vote in what is called the Nichols School House precinct.

Q. Who were the officers of election at that time?

A. Me and P. D. Carmen and Mr. Milton Carmen, and Mr. Menton was sheriff.

Q. Were you an officer of election there that day?

A. I was.

Q. In what capacity?

A. Judge.

Q. Was there any other E. L. Garnett there at that time?

A. No sir.

Q. Were you acting as the Republican or Democratic judge?

A. Democratic.

Q. I will ask you to state whether your attention was at any time during the taking of the vote or its count, as to whether or not your attention was called to the texture of the ballots used by the voters there that day?

A. Yes, sir.

Q. Well, how were those ballots?

A. Well, under some circumstances I could see through them.

Q. If anything was said by any of the officers of election there that day to you, or in your presence, that would indicate that they could tell how the vote of a voter had been cast after the ballot had been folded, tell the committee about it?

A. We all spoke about that.

Cross-examination by Mr. Kohn:

Q. Under what circumstances could you see it, when the ballot was not folded?

A. No, when it was folded, but if I had a piece of paper I could show you. We showed—this is the ballot, here is the perforated line, the voter would bring it folded that way. Me or Mr. Carmen would take off this secondary stub, and then we would refold it, so it would go in the ballot box, and in folding this you could see it, sometimes I did see how several men voted.

Q. Sometimes whilst folding it in the light, you could see?

A. Yes, sir; there was one fold this way.

Q. And the paper in folding it would flop up at times, wouldn't it?

A. It might have, but then I could see it when it didn't flop up.

Q. Just a single fold?

A. Yes, sir

Q. But the ballots generally, you couldn't tell how they were voted?

A. I didn't tell—I didn't notice how any voted, when they were folded ready to go in the booth.

Q. You didn't make the remark that you could tell how everybody voted?

A. Well, I don't remember that I made that remark, I could have told how everybody voted under that same circumstance.

Q. If you had adopted that mode of finding out, as you tear off the ballot, and refold it yourself, you could have found out from the one single, through the single piece of ballot, you could have seen perhaps the mark?

A. Yes, sir.

Q. That is the only way you could possibly have seen it?

A. I wouldn't say that a man couldn't see through it folded this way, but I did not.

Q. You don't know anybody else that did?

A. I don't know whether anybody else did or not.

Q. You were sitting over in that corner just before you were called, were you not?

A. Yes, sir.

Q. Didn't Mr. Happy, one of the witnesses, and a Republican officer, talk to you and report to Judge Yost what you said, and interview you on the subject before you came on the stand?

A. He asked me if I remembered some things.

Q. I will ask you to state whether or not you had stated you were going home or had been released?

A. I had been released.

Q. Who released you?

A. This—so Mr. Happy said.

Q. I just wanted to give a reason for my asking the question.

A. I want to say I would have left on that train but I missed it; I wouldn't have been here, because—.

Mr. James: They had excused you?

A. Yes, sir.

Re-direct examination by Mr. Breckinridge:

Q. When the ballot was handed to you, was it handed to you by the voter?

A. Yes, sir.

Q. Were you the judge to whom the voter handed it?

A. Either me or Mr. Carmen.

Q. Were many of them handed to you?

A. A good many of them were handed to me.

Q. When the voter handed the ballot to you, how was it folded?

A. Generally that way.

Q. So that every vote that you received, or nearly every vote that you received, was handed to you in such way that you could see how the man voted?

A. Yes, sir; if I would have paid any attention.

Q. And then you folded it yourself?

A. Yes, sir.

Q. So that the ballot might be put into the ballot box?

A. Yes, sir.

Charles H. Gibson, a witness, being duly sworn, and examined by Mr. Breckinridge, testified as follows:

Q. Will you give the stenographer your initials?

A. He knows them well; Charles H.

Q. Charles H. Gibson?

A. Yes, sir.

Q. What is your residence?

A. I reside in Louisville.

Q. What is your occupation?

A. I am a lawyer.

Q. And have been so for how long?

A. About thirty years.

Q. And a resident of Louisville how long?

A. About thirty-five years

Q. Were you in Louisville at the recent election?

A. Yes, sir.

Q. Were you a member of the Honest League?

A. Really I don't know whether I was or not; I am under the impression that I signed some paper that was sent around; I never attended any of their meetings, never took part in anything that they did except sent them a very modest contribution.

Q. You didn't participate in any of their meetings?

A. None at all.

Q. Were you present at any conversation with Governor Bradley?

A. I was.

Q. Just prior to the election—when and where was that held?

A. About 6 o'clock on Monday evening before the election, I received a telephone message at my house from Mr. Augustus E. Willson asking me if I would be good enough come to the Galt House, saying that Governor Bradley desired to consult with me on matters of public importance. I told him I would and I went almost immediately to the Galt House from my residence. Shall I go on?

Q. Yes, go on and state what occurred without my examining you.

A. I met Governor Bradley there and the first question that he desired to consult me about was as to the propriety of making a speech that evening at the Auditorium, telling me, however, that he had made up his own mind on that question to the effect that he ought not to make it, and I very heartily concurred in his judgment about it, that under the circumstances being there, as I thought he was, in the performance of his official duties, that it would be grossly improper for him to be making a speech on an occasion of that kind; and he thereupon sat down and addressed a letter, which was subsequently read and published—the letter being addressed to Mr. Wilson—I made one or two unimportant suggestions, perhaps concerning that letter, I don't remember particularly what they were. The letter was written out in my presence, and then after that, Governor Bradley said to me he wanted to feel perfectly certain he had done nothing wrong or improper in causing the militia to be assembled at the armory on the following day, asking me what I knew about the public sentiment, and the public feeling there, and as to what apprehensions, if any there were, in regard to trouble or disorder on the following day, and asked me to advise him frankly, whether he had done right in ordering the militia to assemble at the armory. I told him briefly what my own

view of the situation was. I had no hesitation at all in telling him that from what I had gathered in my talk for days before that with the people that I met, that there was very grave apprehension of rioting and disorder in that city, and I gave it to him simply as my judgment that nothing—there was nothing that could be done that would add so much to the security of our people, contribute so much to a quiet and orderly election as having the militia assembled at the armory so that they could be made available, if there was any occasion for their services. Governor Bradley, also, I remember, asked me to read the statute and the code with him, and I concurred with him in the conclusion he had reached, that he had the right, he being there in person, to call out the militia, and assume the command of them, and that he was not bound, under the circumstances, to turn over the command of the militia to any other peace officer in Jefferson county.

Q. Mr. Gibson, was that, after examination, your opinion as a lawyer, of the power and functions of the Governor?

A. It was. He had the statute and the code both there, I had never paid any particular attention, in fact, I may say, no attention at all to the question at all before we had some little discussion of it, and I had no hesitation at all in concurring in the view that Governor Bradley expressed to me about his rights, and still less doubt had I about the propriety and the necessity of his doing what he had done.

Q. Will you say to the committee what were the reasons in your mind—the reasons which you had that made you come to the conclusion expressed that you still had less doubt as to the propriety and expediency of what he was doing about assembling that regiment at its armory?

A. Well, necessarily my views upon that subject were the result of what I had heard in discussing the situation with the people whom I met day by day and hour by hour throughout the city. There was, so far as I was able to gather, amongst the people whom I met and talked with, the gravest apprehensions that we were going to have a disorderly election. Nothing was commoner than to hear people say something about the repetition of "Bloody Monday," for instance, talk of that sort; and so far as I could gather it, amongst the people I met with, there was the most serious apprehension that we would have very decided disorder and trouble on election day, unless something was done to prevent it. The only thing that occurred to me that could prevent it was the calling out, or at least, the assembling of the militia in the armory, so it would be known that they were available for the purpose of putting down disorder, and it is my judgment, whether I am right or wrong, that that was the one thing that assured us a comparatively quiet and orderly election, at least, so far as I know, it was wholly so.

Q. I was going to ask you the question you practically an-

swered, as to whether that election was not a quiet and orderly election?

A. So far as I had any opportunity to observe, it was, I think, quiet, and if I may speak from information, say quite as orderly as our elections there generally are.

Q. I will ask you to state whether in your judgment that was not largely, if not entirely, due to the fact that it was known that that regiment had been assembled, or was to be assembled at the armory?

A. That was my opinion of it, and I know it was the opinion of many others whom I heard speak of it.

Q. Do you know anything of the composition of that regiment, as to whether it is composed of the young men of Louisville, residents of Louisville?

A. I can not speak of it outside of some of the officers whom I happen to know.

Q. Are they residents of Louisville?

A. So far as I know, they are.

Q. Do you know anything—have you any knowledge of the custom that has obtained in Louisville for a good many years as to whether or not there has been an assembling of a part or whole of the old Legion at the armory on election day?

A. Well, I can only speak from general information on that subject, which is to the effect that upon all occasions, more especially elections where disorder is to be apprehended, that, at least, a portion of the Legion has been assembled there. I can not speak specifically about elections or any other occasion.

Q. What has been your political affiliation?

A. I have been a Democrat all my life.

Q. Are you a partner of Governor Marshall?

A. Yes, sir.

Q. How long have you been a partner of Governor Marshall?

A. Since 1891, I think it is.

Q. Do you know whether you were called in as a partner of Governor Marshall in this consultation, or how?

A. I don't know how I happened to be called in at all. I simply received the request from Mr. Willson to know if I was willing to come down to the Galt House and confer with Governor Bradley.

Q. Who else was present, if anybody, at that consultation?

A. There were a great many people, Colonel, coming and going, at the time I was there.

Q. Who are some of them, if you recollect?

A. I remember that Colonel Landrum was there, George W. Griffiths was there, Mr. Kinkead was there—Robert C. Kinkead; Dr. Baker, Mr. Woods—Bob Woods, as we call him; a number of gentlemen whom I didn't know. I am not well acquainted in political circles, but there were a number of gentlemen coming and go-

ing, whom I didn't know at all. I remember Mr. George Denny, an old class-mate of mine, was there; I don't recall any others just now.

Q. You yourself have never been actively engaged in politics at all?

A. No, sir; never at any time.

Cross-examination by Mr. Phelps:

Q. You are not only a law partner of Mr. John Marshall, but you are a relative of his, are you not?

A. He had the distinguished honor of marrying my niece.

Q. You were called in at what time to advise with Governor Bradley about calling out the troops?

A. It was about six o'clock the evening before the election—not to advise with him about calling out the troops; I don't wish to be understood that way.

Q. But what he had already done in calling them out?

A. Yes, sir; Governor Bradley—I don't mean to say that he had any doubt at all about the wisdom of the course he had already taken, but in order to be further assured of it. I remember he showed me a number of affidavits that had been filed before him. He asked me if I knew the people who had made these affidavits, and whether they were reputable people, and all that.

Q. But what I want to get, when Governor Bradley got the benefit of your advice, he had already acted some six hours before your advice was given?

A. I don't know how long before, but as I understood, the order for the assembling of the Legion at the armory had been given before that, and I really understood that the only point upon which Governor Bradley had first desired my advice, was as to the propriety of his making a speech that evening. The other matter came up incidentally, as it were.

Q. As to the advisability of making a speech on that evening?

A. Yes, sir.

Q. You advised him against it?

A. I did.

Q. Upon the idea that he was there—

A. He had his mind made up not to do it before he asked me.

Q. Your advice was given on the idea that he being the chief executive, was there, and had the right?

A. Yes, sir.

Q. And the matter of propriety—

A. Yes, sir; that he was there in the performance of a duty as he conceived it to be.

Q. Are you not aware of the fact that on the night before that he made a public speech at Music Hall with Mr. George Denny?

A. No, sir; he could not have done that because that would be Sunday night; he made one on Saturday night, I think.

Q. Wasn't that subject to the same criticism as Monday night?

A. I don't think so, because I don't think at the time it was made, it had been decided to call out the militia.

Q. When was it decided to call out the Legion?

A. I don't know, I never heard of it until Monday. I never heard of it until Monday afternoon.

Q. You know, don't you, that on the 26th—about the 26th of October, the place for the troops was rented?

A. No, I don't know anything about that at all.

Q. Don't you know, as a matter of current history, that along the last part of October, the place on Main street was rented and announced in the papers?

A. I knew that the old Bamberger-Bloom & Company building was rented temporarily for an armory, but just when I can't tell you.

Q. Did you know that about the first of November, the last day of October, about a week before the election, the ammunition were brought to Louisville, and wasn't that generally known by the people?

A. I knew nothing of it; I saw some publication in the newspaper about it.

Q. Did you know that a day or two before the election, two Gatlin guns were brought to Louisville?

A. I saw it so stated in the paper.

Q. You knew all of that before you saw the Governor?

A. Oh, yes.

Q. The gentlemen consulting with him at the time you went, Colonel Landrum, he is a Republican?

A. I think so.

Q. Dr. George Griffiths, he is a Republican?

A. I know him to be one.

Q. George Denny, you know him to be a Republican?

A. Yes, sir.

Q. Dr. Baker is the Republican postmaster at Louisville?

A. Yes, sir; so far as I know every one I met there was a Republican save myself.

Q. And you were the partner of the Republican candidate for Lieutenant-Governor?

A. Yes, sir.

Q. Mr. R. C. Kinkead was a Republican and a candidate on the ticket to be voted for the next day?

A. I think he was a candidate for park commissioner—in fact I know he was.

Q. Mr. Robert Wood was a Republican who had theretofore been a candidate for Commonwealth's attorney, was he not?

A. Yes, sir.

Q. And he was the chairman of the city campaign committee of the Republican party, was he not?

A. I don't know about that.

Q. Were you an officer of election on election day?

A. I was an inspector; yes, sir.

Q. At what precinct were you an inspector?

A. I believe they call it the forty-fifth precinct of the seventh ward; one of those newly annexed precincts. I know they told me I would get killed if I would go there.

Q. At the southern end of the city?

A. Yes, sir.

Q. Did you have credentials there on that day?

A. I had credentials signed by Mr. Davis, of the Republican party. I had received a request possibly from the Honest Election League; I didn't know at that time that I would act on the day of the election. I said I would. And I finally received from some source an appointment as an inspector, signed by Mr. Davis.

Q. It was well known by the people of Louisville that Mr. C. C. Mengel, the colonel in charge of the troops there, was a Republican?

A. I knew it and I think it was generally known.

Q. It, of course, was well known that Governor Bradley was a Republican—everybody knew that?

A. I think so.

Q. And everybody knew that Governor Bradley was quite interested in the election, and had taken a prominent part and been on the stump?

A. I had heard some comments about his not being as active as he might have been.

Q. Did you hear his speech in which he expressed regret that he could not travel on lightning so as to make more speeches than he was making?

A. I don't remember whether I heard him say that or not; I heard him make a very excellent speech.

Q. You know as a matter of fact that Governor Bradley was making speeches for the ticket and was interested in the success of the Republican ticket?

A. I heard so, and I don't doubt he was deeply interested in it.

Q. You know that the peopleof Louisville knew that?

A. I should imagine they did.

Q. And when the people of Louisville learned that troops were called to Louisville, and this ammunition and these guns were brought there, and that they were to be in charge of Colonel Mengel and Governor Bradley, they knew that they were in charge of the Republicans who were interested in Republican success, did they not?

A. Yes, sir; but if you will permit me to answer you, I will say that the people in Louisville who know Colonel Mengel I believe would never suspect him of making any improper use of the militia, or anything else, under his command.

Q. Do not the people of Louisville who know Mr. Mengel know that he is quite a partisan Republican?

A. I believe the people in Louisville who know Mr. Mengel know him to be a very honorable man. He may be a very intense partisan.

Q. We agree that he is a very honorable man. He is nevertheless quite a partisan for his party, is he not?

A. I can't say that, because I am not in his party. I don't know.

Q. You know in this last election he was quite interested and quite a partisan, don't you?

A. I can't say that I know it.

Q. I understand you that you were requested to act as inspector by the Honest Election League?

A. I am not sure how the request came. It came in a circular letter, and I simply answered back that I would act in any capacity I was asked to.

Q. By some representative of the Honest Election League, you don't remember who it was?

A. I am not sure whether it was the Honest Election League, or whether it came from the Republican committee, or how it came.

Q. Whether the Republican committee or the Honest Election League, you got credentials of a Republican?

A. Signed by Mr. Davis as chairman.

Q. You didn't know Mr. Davis?

A. Yes, sir; I have known him for years.

Q. Did you have any conference with him?

A. None in the world; nor with any one else.

Q. Mr. E. A. Wilson was the gentleman that requested you to come and see the Governor?

A. Yes, sir.

Q. He is a prominent Republican?

A. Very.

Q. And was making speeches for the ticket?

A. I heard so.

Q. Were you present at the meeting of the citizens at the Board of Trade held some ten days or two weeks before the election?

A. I was one of the murderers and mauraders that were there.

Q. Did you hear the pledge and promise of the Mayor, the chief of police, and the president of the board of safety there given that they would preserve order on election day?

A. I did.

Q. Was or not that given in good faith in your judgment?

A. I don't know whether it was or not. I know they were very grave doubts among a very great many of the people there as to whether the mayor's pledge—

Q. I was asking you about yours—I want to get your own judgment, not that of the other people. I will ask you if that pledge, promise, was not publicly given without any reservation or equivocation of any kind?

A. It was undoubtedly given, and in language that ought to have satisfied anybody who believed in the speaker.

Q. Did you or not believe in that?

A. I did not.

Q. You did not believe that either Mr. Lyons or Colonel Haager, or Mr. Weaver intended to do what they promised and try to give an orderly election.

A. I will have to make an exception right here. So far as Mr. Weaver is concerned, I did not believe—if you force me to answer the question, it is very unpleasant to do it—I did not believe he intended to have a fair election. I believed that Colonel Haager, if left to himself, with no other instructions than to do his duty, would have done his duty at any cost. I believe him to be an absolutely fearless officer, and an intelligent officer who knows and understands his duty. If he had been left to himself, with no other instructions than to do his duty—I believe nothing—I know the man well enough to know that he would have left nothing undone to have given us a quiet, orderly election. I do not want to be understood by that now as implying that he had any other orders to the contrary. Mr. Haager is not only my friend, but my client, but I don't want it to be understood that he has ever stated anything of the kind to me. You simply asked me for my opintons, and the good faith of statements that have been made by public officers, and I am giving you a frank answer to that.

Q. As to Mr. Lyons?

A. So far as I understod the purpose of that meeting, it was more to influence Mr. Lyons than any other official in the city of Louisville. The apprehension was about Mr. Lyons. The people whom I met, and the people whom I talked with, and particularly the class of people who were at that meeting, believed that Mr. Tierney, one of the board of public safety, was disposed to keep the police force out of politics on election day. There was a very general belief that Mr. Suter was disposed to use the police for political purposes, so far as he could, and that the balance of power was held by Mr. Lyons, and that the real purpose of that meeting was more to influence Mr. Lyons, and to induce him, if possible, to keep the police out of politics on election day than anything else. That was the understanding I had was the purpose of that meeting.

Q. Mr. Lyons did then and there make a public speech to that meeting?

A. He did, unquestionably.

Q. Did he make that in good faith in your judgment?

A. I don't know whether he did or not. Mr. Lyons is a

gentleman for whom I have very great respect, but I don't think—I would much rather you would not ask for my personal opinion—I would much rather give you the impression I got from other people.

Q. But you have given us what caused you to advise that action?

A. So far as I was concerned my impression about Mr. Lyon was that he would keep his pledge; but I know there were a great many who heard him that did not believe he would keep his pledge; for my own part I do believe it.

Q. So that this meeting called by the Board of Trade was in truth and in fact, for the purpose of trying to influence Mr. Lyon on the subject?

A. Largely for that purpose.

Q. Was it advertised to the public for that purpose?

A. I don't know whether it was advertised for that purpose or not. I don't know even how I was invited myself to that meeting.

Q. Did Colonel Haager on election day or his policemen in any wise interfere with the election, or go into politics?

A. Not so far as I know.

Q. You stated you knew Colonel Haager well enough to know if he was not interfered with that he would keep the police out; you know he kept them out—then it follows that no one interfered with him?

A. No sir; I gave my opinion as to what he would do if left to himself. What he did do or whether he kept them out, I do not know.

Q. Have you heard yourself or from hearsay—for I will give you the broadest possible scope—any complaint of any policeman interfering with the election?

Q. Give us the names?

A. It would be impossible—I remember on the night of the election when I was down on the streets I heard a number of complaints made of officious police.

Q. Will you give us the name of any policeman you heard complaint of?

A. I certainly heard the names given that night, but knowing very few policemen in Louisville, I cannot recollect them now.

Q. Did you hear or see, or know of the instructions given by the board of public safety to Chief Haager, and by Chief Haager to the police, before the election, on the subject of their duties on election day?

A. I think not.

Q. Did you read that when it was published?

A. I heard them spoken of but I don't remember that I saw them.

Q. Don't you remember that Colonel Haager signed his name to such instructions, and published them in the papers, as to what

he would do, as to what would be done, and as to what he would have done?

A. I think I read something of that sort.

Q. Mr. Gibson, did you see or read, or know anything about the charge that Judge Evans gave to the grand jury the day previous to the election about State elections?

A. Yes, sir.

Q. Did you ever in all the thirty years of your practice know, or ever hear, of a Federal judge giving a similar charge to that as to a State election?

A. I do not recall any.

Q. Have you ever heard or read of such a thing in the history of this country?

A. Yes, sir; in the days of the carpet baggers down South; I do not remember anything of that kind in this country.

Q. Can you refer us to any such charge even at that time?

A. No, sir.

Q. In all of your practice you have never known of such a thing as a Federal judge, just before the election, giving such a charge about a State election, and then adjourning the grand jury over to the Monday following the election before this time?

A. If I did I have forgotten it.

Q. Was, or was not, this action of Judge Evans' disseminated through the press pretty generally through the city?

A. I read it in the newspapers, and I suppose others read it.

Q. You have stated something about somebody expressing apprehension of trouble on election day; people you met; you have been asked about that. Will you give us the name of some of the persons you have talked to who expressed that apprehension?

A. As a matter of course I had those talks with people in my office, on the street cars, at clubs, on the streets and different places; and if you will give me a little time to think, I could give you the names of a number of people who thought we were going to have trouble on election day. I know I thought it myself.

Q. Can you give us the names of some of them now that you heard expressing that apprehension?

A. I remember that our friend, John R. Calloway, was in my office the day before the election, and was very apprehensive about trouble.

Q. You were not very much impressed by the apprehensions of Major Calloway?

A. My own were great enough.

Q. I want you to give me the names of some of those who expressed their apprehension and who impressed you?

A. Just the people I met. I would be as much impressed by his statement as by anybody else. I think he had probably better opportunities to know.

Q. Who else?

A. Mr. Phelps, you know it is ridiculous to ask me about the names of people from whom I got my impressions.

Q. Name anybody else.

A. Major Calloway. I think if I had time I could think of a number. I suggested Mr. William Cornwall. I remember him; I met him on the corner of Fourth and Park avenue, and he expressed some apprehension; I had gone there to take a car; different people coming into the office; meeting them on the street; wherever I went, particularly two or three days preceding the election.

Q. Was it the talk that had been had about burning colored buildings, and taking the mayor out and hanging him, that gave you apprehension?

A. No, sir.

Q. What were the threats you heard?

A. The threats that I heard,—I don't know that I heard any threats but the general talk in Louisville that the police force and fire department were completely administered by mayor and others working with him in the interest of Mr. Goebel; and that they were determined to carry the city of Louisville at all hazards; the events of the June primary which I understand has been tabooed in this case; the use of the police and firemen in those incidents; and the current events happening from day to day as they were, manifestly gave rise to that fear and apprehension that there was going to be rioting and disorder.

Q. What were the current events?

A. Things that developed from day to day and were published in the papers from time to time.

Q. Now I want to keep events in their order; name some of the things that developed from day to day?

A. I have not kept a diary of these things.

Q. Name a few.

A. I read the newspapers from day to day, and I read them all.

Q. You are getting off on to the newspapers?

A. My information I got from the newspapers. I attempted to divorce my office from politics; I would not let Marshall come there.

Q. You referred to current events, things that were taking place; will you name some of them?

A. I simply mean the talk you hear about things that were being done, and things that were going to be done.

Q. Can you give us the names of any of the persons that told you any of these?

A. The great apprehension they had about the election commissioners in the appointment of the election officers; the mayor's proclamation? I remember a great many speaking of that.

Q. What was there in the mayor's proclamation that gave you apprehension?

A. The mayor's proclamation was looked upon, or was regarded

by a number of people;—I know that part of it about the appointment of a large number of extra policemen,—I had had some experience with special police before and I knew what they would do. I did not look upon it as a move for the protection of property and life, but rather as a menace.

Q. Do you know as a matter of fact what was done with those extra police?

A. I never heard what was done.

Q. I will ask you if they were not put into the station houses in the different parts of the city and held there all day?

A. I don't know.

Q. Did you see or hear of anybody who was molested by them?

A. I never heard of them doing anything.

Q. Can you give us the names of any persons who communicated to you any of the events you have spoken of which gave you apprehension?

A. Pretty nearly everybody I met.

Q. Can you give the names of any of those persons?

A. I probably talked to you.

Q. Will you state you had any such talk with me?

A. No, I do not remember that I did.

Q. Will you name any persons you did have such talks with?

A. Yes, sir; if you will give me time to think; people coming and going in and out of my office all day; meeting people in the street cars. Now to undertake to single out those people is simply out of the question.

Q. Will you think up a few of these names for me? I don't want to annoy you about it, but I think it quite important?

A. No; I won't say I can't; I won't.

Q. In your talk with the Governor on Monday—I forgot a matter that I had in mind—in your talk with the Governor when he told you what he had done in the direction that the Legion be assembled, did he give you to understand that he was going to stay there himself and take charge of them?

A. He did; he said he would be personally in command.

Q. And you advised him, as I understood from you, that under the law he had a right to do that?

A. I hastily looked—read the statutes and code on the subject.

Q. Did you take the trouble to read the constitution on that subject?

A. Yes, sir, I think so.

Q. I will read you section 75 of the constitution and see if you read it to the Governor. "He shall be commander-in-chief of the army and navy of this Commonwealth and militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless advised so to do by a resolution of the General Assembly." Did you discuss that section with the Governor?

A. I think we did; I think we went over that and went over the statute and the code and the constitution together, very hastily.

Q. Did you have before you any other section of the constitution except the one I have read?

A. Yes, sir; Governor Bradley read to me what I supposed was all the law.

Q. I believe you said in answer to Col. Breckinridge that you had knowledge of the custom of assembling the troops on election day at the armory; did I catch you correctly in that?

A. I had understood, Mr. Phelps, from general information, that it had always been the custom, not only on election day, but on all occasions when there was any likelihood of trouble to arise, to have not all the Legion, but enough to meet any emergency that might arise.

Q. Did you ever hear before in your life, in the city of Louisville of all the Legion being put in arms in the armory on election day, until this time?

A. No, I think not.

Q. Do not you mean that heretofore on election day they have put a guard in charge of the property in the armory, enough men to protect their property there?

A. My understanding was it has been the custom to put something more than a guard in the armory; but I do not remember any instance in which the entire Legion has been called out on election day.

Q. Except this one of 1899?

A. So far as I know.

Q. Have you ever heard before in the history of Louisville of the publication being made the day before the election of the arrival of two gatling guns with the necessary ammunition at the armory?

A. I don't remember anything of the kind.

Q. Have you ever in the history of Louisville, ever heard or known of such a thing as a large amount of ammunition—8,000 rounds of ammunition, and a number of guns and bayonets brought into the armory, a few days before the election?

A. No. sir; I do not think I ever knew of that before.

Q. The first time you ever heard of any of these things being done, as I understand was on the last election day in Louisville?

A. So far as I know.

Q. The charge of Judge Evans in reference to the State election, —you never heard before in your connection with the law of that being done?

A. Never before; if I have, I have forgotten it.

Re-examination by Col. Breckinridge.

Q. I will ask you whether it ever occurred to you that section 75 of the constitution which reads "but he shall not command personally in the field, unless advised to do so by a resolution of the General Assembly" applies to the calling out of the militia simply to

protect property and protect life; or whether it did not apply to some permanent military condition, in which the militia takes its place in the field?

A. I remember that expression "in the field" was the subject of some comment there that night; and my recollection is that the conclusion was that the Governor's presence simply took the place of other subordinate peace officers.

Q. Do you not know from the history of Kentucky that Gov. Shelby construed that when he undertook to take command—

By Mr. Kohn: I object to the construction of Gov Shelby.

A. I do not remember that piece of history.

Q. I will ask you as a lawyer if this provision of the constitution has anything to do with the power of the Governor as the Chief Magistrate of the State to call out the militia and personally superintend and order its actions further than to protect property and life?

A. I do not think so. I read the law; I did not give it mature consideration; I do not pretend that I gave the subject any very mature consideration, but taking it all together, the constitution, statute and code and so advised the Governor, that he, as the Chief Magistrate, officer of the commonwealth, had the right himself to take command of the militia, and not bound to turn it over to the sheriff or mayor or other subordinate officer.

Q. In answer to the question by Mr. Phelps you stated that Gov. Bradley submited to you either the affidavits, or gave you the names of the affiants, and asked you whether they were men of good character?

A. He did.

Objected to, sustained.

Q. I will ask you the names of the persons whom Gov. Bradley stated to you in that conversation had made affidavits?

A. I don't know that I can recall all of them; I remember Mr. John B. Baskin was one, John R. Calloway was another.

Q. Mr. Robert Cochran?

A. Yes, sir, Mr. John C. Miller was another.

Q. Charles I. S. Steward?

A. I do not remember his name because I do not know him.

Q. Mr. Allen Carter?

A. I do not remember his name. He gave the names of probably eight or ten people, most of whom I knew, and I told him they were all reputable people.

It was moved by Counsel for contestant that the above answer be stricken from the record, which motion was granted.

Q. Mr. Phelps has brought out in your cross-examination the meeting at the board of trade at which Mr. Lyons and certain other gentlemen made statements. At that meeting of the board of trade Mr. Caruth was also present and made statements?

A. Yes, sir.

Q. And the pledge made by Mr. Caruth, Mr. Weaver, Mr. Lyons and others was that there should be a peaceable and fair election?

A. Yes, sir.

Q. Was this proclamation of the mayor made after that meeting?

A. Oh, some days after that meeting.

Q. Did you know anything about,—from the public press or the current history of events in Louisville at that time that 79 officers of election in 78 separate precincts were changed the day before the election?

Objected to because matter in chief; sustained.

Q. I will ask you whether you know from the public press, and current history, that 79 officers were removed in 79 precincts, and 79 Marshall officers were substituted in their places?

A. I think I heard of that it came out in the public prints; that occurred on Monday afternoon, the day before the election. I heard that when I went to the Galt House to see Governor Bradley.

Q. Was that one of the events of which you have spoken in your cross-examination by Mr. Phelps, as being one of them that made you fear the election would not be fair?

A. No, sir; I had that fear before that happened; but that would certainly have intensified that fear.

Q. Had you ever known in the history of Louisville before this election, that the night before the election seventy-nine officers had been changed in that way?

A. No, sir.

Q. It was brought out in the cross-examination that you were an inspector—where were you an inspector?

A. In South Louisville, a part of the city I had never been in before, out near the wagon works. I went there with great trepidation.

Q. During this canvass, I understood you to say that Governor Bradley—you knew that Governor Bradley made speches?

A. I heard him make one, and I heard of his making others.

Q. The question has been asked whether you thought it was the proper thing for the Governor to do that?

A. I don't think it was proper for him to make that speech on Monday, after he had come there in his official capacity;—I don't think it was after that.

Q. I will ask you whether during this past canvass various officers of various parties—circuit judges, and judges of the court of appeals—from judges of the court of appeals down, did not make stump speeches?

A. I do not wish to be understood as saying that there was any impropriety in Governor Bradley making speeches up to that time.

Q. Mr. Phelps has asked you about Judge Evans' charge. Will you state whatever is your judgment as to the effect that had upon

the voters of Louisville, and to whether it prevented any voters from going to the polls, and if so, to what extent in your judgment?

A. I could not conceive how it possibly could have any effect, to intimidate or keep anybody away from the polls; if it had any effect it would prevent them from violating the law, and trying to prevent the having of a fair election.

Q. You have spoken of the effect of the proclamation of the mayor upon you; will you give to the jury the reasons you had for saying you did not believe that that proclamation was made in good faith or given for the purpose of preserving peace.

A. Personally, I regarded it simply as a part of what I believed to exist—that is a scheme to control the election of the city of Louisville in the interest of the Democratic ticket; I did not think it was in good faith. I do not want to do Mayor Weaver any injustice, but that was my view—the view I heard very generally expressed.

Re-examination by Mr. Phelps:

Q. You did not regard the arrangement made for the militia, providing arms, and everything, ammunition, just before the election as a part of any scheme?

A. No, I did not.

Q How many changes in the election officers did you say were made the day before the election?

A. I didn't say.

Q. Do you know?

A. I don't know. My recollection was 87—Colonel Breckinridge said 79.

Q. Do you know how many Judge Barr made himself?

A. No, sir.

Q. Did you speak advisedly and deliberately when you say you never heard of changes being made in election officers in that short a time before the election?

A. Yes, I have heard of changes being made, but never before to that number. Judge Richie made changes.

Q. I will ask you if Judge Richie did not change on the night before the election, one of the officers at least, in every precinct in the city?

A. My recollection is that the changes were not so extensive; my recollection is that he made a number of changes, and it cost him his election.

Q. Did you ever hear of the other county judge before him making changes even on the morning of the election—Judge Hoke?

A. I do not remember that I ever heard of Judge Hoke making any extensive changes.

Q. Frequently changes do have to be made, just before the election?

A. Yes, sir.

Q. Do you know what the politics is of any of the 79?

A. Not knowing them, I can't state their politics.

Q. And you can't state that anyone was changed—that any man was taken out and another man put in his place of different politics?

A. I didn't know the people.

Re-examination by Colonel Breckinridge:

Q. Do not you know that the charge was made that Judge Richie had made these changes in the interest of the Democratic party? You have referred to changes made by Judge Richie, as if that would establish a precedent; I want to show that it was a very bad precedent to follow. The question I asked you is, don't you know that the charge was made that the changes made by Judge Richie were made in the interest of the Democratic party, and that they were improper, and that it lost him his election?

Objected to. By the chairman: I do not believe it is competent, but he may answer it.

A. I can't say about that, Mr. Chairman; I can only repeat the general impression from the general talk I heard. I can not undertake to say that any definite charge was made against Judge Richie about it; I can only give you the general talk about it, if you care to hear that.

Re-cross-examination by Mr. Kohn:

Q. Mr. Richie and that whole ticket was defeated?

A. Yes, sir; I think so. The general impression is that it was counted out.

Q. Who had that general impression?

A. I think you will find it very general if you go to Louisville.

Q. You said something about the changes made by Mr. Caruth and Mr. Hoertz; do not you know that these gentlemen were appointed about ten days or two weeks before the election, and that a resolution was passed when these officers were appointed—passed by the board, that there would be changes made from time to time until the morning of the election, and that Judge Barr offered that resolution himself?

A. I don't know; I can't say anything about that; I know they were appointed a very short time before the election, so as to render it impossible to appoint a full set of officers without the expectation of making some changes. My understanding was that a full set of election officers had been appointed several days before the Monday before the election; and these eighty-seven as I remember, and not seventy-nine as stated by Colonel Breckinridge were changed on Monday.

Q. Who gave you that information?

A. I don't know; I got it at the Galt House; Mr. Kinkead, I think.

Q. Did not you see in the papers a resolution offered by Judge

Barr, and passed by the board that changes would be made from time to time until the day of the election?

A. If any such resolution was published I very likely read it.

Q. You don't know the circumstances under which those changes were made?

A. No, sir.

J. T. O'Neil, a witness called for contestee, being first duly sworn, and examined by Colonel Breckinridge, deposed as follows:

Q. What is your residence?

A. Louisville, Ky.

Q. How long have you lived in Louisville?

A. I moved there from Woodford county, my native county, in 1875, and have lived in Louisville continuously since that time.

Q. What is your occupation?

A. Lawyer.

Q. Have you held any official position in the city of Louisville since you have been there?

A. No, sir. Yes, sir; I have been chairman of the Democratic city and county executive committee, and also been chairman of the board of election commissioners for Jefferson county.

Q. When were you appointed a member of the board of election commissioners?

A. In 1898, I think it was.

Q. You served one year?

A. Yes, sir.

Q. Who were your colleagues of that board?

A. Major R. C. Davis was the Democratic colleague, and Mr. Hiram Phelps was the Republican colleague.

Q. You say you were chairman of the Democratic county and city committee?

A. The correct title is "the Democratic city and county executive committee." I was chairman of that committee during the year 1897 and probably into the year 1898, when I resigned.

Q. What were your political affiliations in 1896?

A. I have been a Democrat, gentlemen, all my life, and I am still, I think, a Democrat—a Chicago platform Democrat, a sort of toll gate raider, anarchist Democrat, until just before the election, when I joined the Honest Election League at Louisville, and since that time I have been a marauding Democrat. I have been a Democrat all my life. I stumped a considerable portion of the State for Bryan and for free silver, and have never changed any of my political opinions at any time. I did vote at the last election for the nominees of the Lexington convention.

Q. Which Lexington convention?

A. The convention that nominated ex-Governor Brown as a candidate for Governor.

Q. There were two Lexington conventions?

A. I did not want to be mixed up with the wrong one.

Q. Were you one of the charter members—original members of the Honest Election League?

A. I was in entire sympathy with their efforts from the start; I never had an opportunity, I don't think, to attend a single one of their meetings; but it was made up of our very best citizens, and I think for an entirely proper purpose—a non-partisan organization, and I think I was a charter member, by which I mean one of the first members; but I do not recall having ever been able to attend any of their meetings.

Q. I will get you to look at the paper I show you and see whether that is, according to your recollection, the constitution of the Honest Election League?

A. That was in the paper of yesterday—The Post?

Q. Yes, sir.

A. Yes, sir. I saw that in the Post yesterday, and according to my recollection the purposes of the League are correctly expressed in that article. The gentlemen's names who were appended to that were the original members of that league.

Q. Were you one of the attorneys in one or more of the actions instituted in the Jefferson Circuit Court, law and equity division, of which evidence has been giving during this hearing, in one of which John Young Brown was plaintiff, and I don't know who the defendants, and in the other John Marshall was plaintiff and some other persons defendants?

A. I was one of the attorneys in the case of John Young Brown v. Chas. P. Weaver and others. I was not attorney in the case of Marshall against the same defendant.

Q. Who were the attorneys with you in that case?

A. Mr. W. M. Smith was the attorney. The petition in that case was written and prepared, according to my recollection, by either Mr. James P. Helm or Mr. Helm Bruce. I remember of having a consultation with one or more of those gentlemen about the petition. I do not know which of those gentlemen prepared it, and Mr. Smith and I signed the first petition because we took charge of that case.

Q. Will you state to the commission what occurred between you and Judge Toney if you were present, when the petition was offered and motion for a temporary injunction was made?

A. When we determined to apply for the injunction, which was on the day of the election, as I now remember, Mr. Smith or I, one or the other, or some one who we requested to do so, telephoned to Judge Toney at his residence. He had a telephone at his residence. We do, very frequently, in matters where we need the attention of the court—of the judge—ask him to be at his court room, or some other place, and in this instance we asked him to come in order that we could make the application for this injunction. We received word that if his presence was needed he would come down to his court. I think that was about eleven o'clock. My recollection is

we expected to have caught Judge Toney at the usual hour of his court at ten, but I think it was equity week, by which I mean, gentlemen, we have no jury during equity week. Each one of our circuit courts, that is the two common law branches of our circuit court, have three weeks of juries and one week of equity, and as a general thing during equity week the judge, unless his attention is especially required, remains at home and does his work. He very promptly answered he would be down. We went to the court and in the usual way presented our petition, and he heard it very patiently, and granted the injunction. A young man by the name of Baldrick, before the petition had been read in full, went to the judge just probably about the time it was called—I do not remember just the time at all, and said to the court that he wanted time to get some counsel there for the defendants. I do not remember whether he said Mr. Kohn or Mr. Phelps or whether he gave the name of the counsel. The judge told him that the petition showed a right to this relief, and was purely an ex parte matter; that these plaintiffs were entitled to the relief and he would grant it on the affidavit that their injury was irreparable, and if any harm was done they could give notice to dissolve it; but that he did not believe, under the circumstances, that the plaintiffs could be asked to wait until he could go out and get these gentlemen there; and he granted the injunction. I took possession of the orders of injunction, taking an officer, and either Mr. Smith or I, or both—I am sure I went—caused a copy to be served on Chief Haager in person, and also one on Mr. Lyons. We looked for Mr. Weaver and were unable to find him. I know nothing more of what occurred with the judge on that day.

Q. You did not see him any more about this matter on that day?

A. No, sir.

Q. You were not present at Mr. Walker's office?

A. No, sir.

Q. Was any notice ever served on you, or anyone else that you know of, to dissolve this injunction?

A. I am positive it was never served on me; and I never heard of anybody else being served.

Q. Any such notice been filed in the records? Under the law was it necessary for you to give notice about making the motion for the injunction?

A. Not at all. I remember the court saying that under the allegations of the petition it showed that these plaintiffs would suffer irreparable injury if it was not immediately granted; and he could not see how anybody could be injured by those inspectors being in the polls. I also remember his calling attention to the fact that he had seen the letter of Judge Pryor, and entirely agreed with him on the law.

Q. What letter do you refer to?

A. To the letter of Judge Pryor, chairman of the State board, in which he declared that the Honest Election League Democrats were entitled to inspectors and challengers in the polls. I have forgotten to whom that letter was addressed, but I remember to have seen it. I know he referred to it.

Q. Were you in Louisville the remainder of the day of election?

A. Yes, sir; I was there the whole of that day, and for many days before that.

Q. Did you know that the Louisville Legion had been ordered to assemble at its armory on the morning of the election?

A. Yes, sir.

Q. When did you first know of that fact?

A. I don't think I knew of it until the day before the election. I don't know just when I did hear it, but I think sometime on Monday afternoon, probably. The officers immediately, I believe, under Captain Gray—I think he is the next officer in command—is a own cousin of my wife, and I think I learned it from him.

Q. Who is that?

A. Lieutenant W. H. Henry.

Q. Do you know whether that Legion is composed of citizens of Louisville?

A. Yes, sir; it is. The Legion is composed of our boys. I do not know that I could go over and give the names of a great many. I know some of them. They are our home boys; and the officers of the Legion are also our citizens down there and they are men of high character, and very high standing in the community.

Q. Were you present at the meeting at the board of trade about two weeks before the election, at which Mayor Weaver and others were present?

A. Yes, sir.

Q. Did you hear the statements of Mayor Weaver, Mr. Lyons, Mr. Bell, Mr. Caruth, Mr. Haager?

A. I think I heard all the statements heard on that occasion. That is the only meeting of the citizens, I think, that I attended; that was an open meeting. I was there and I think I heard all the statements that were made?

Q Did you see the proclamation of the mayor?

A. Yes, sir.

Q. Did you know and when did you first know, if you knew at all, of the change of some 79 officers of election in 79 precincts and the substitution of marshal officers for Republican officers?

A. I never heard of such a thing until probably the day after it was done—the next morning?

Q. The morning of the election?

A. Yes, sir.

Q. From your knowledge of the condition of the public mind in Louisville at that time, and of the condition of affairs, will you say to this board, whether, in your judgment, the assembling of that regiment in its armory, was or not, a wise precaution?

A. I think, gentlemen, it was the wisest step that could possible have been taken, for these reasons; the people of our city had lost confidence in our administration in political affairs, owing to some recent events that had occurred just shortly befoe this election. I suppose it is not proper to go into those matters, but I can do it if any gentleman wishes. The citizens were greatly aroused about what had occurred; and that was one of the causes of that meeting at the Board of Trade, of which I have been asked. The statements of those officers at the Board of Trade, to a very considerable extent, satisfied the people for a time. The sentiments of our community were such at that time, that they were determined, whatever might be the sacrifice, that the wrongs committed at the June primary should not be repeated at any cost; and under that feeling members of the community were assembled at the Board of Trade—our very best people—men of all party affiliations; men of the highest personal character, got together and asked these officials to be present and give some assurance that we should have a peaceful and lawful election; and do that in order to prevent a repetition of the wrongs that had been perpetrated a few months before—a reputation of which would certainly have resulted in bloodshed. I heard all of these statements, and I want to say that I believe the great majority of the citizens were greatly gratified by these statements. Some of these statements were not very satisfactory. I remember Mr. Lee Suter being called upon to state what he would do—he was then a member of our board of safety—Mr. Suter gave most of his time to a defence of the conduct of the police on the day of the primary. I remember also this statement of Mr. Caruth's—very satisfactory at the time; and I was impressed by the fact that he turned to Judge Humphrey who was the chief spokesman on the other side, and asked him if he thought there could be an honest election as long as there was one honest man in each precinct, and Judge Humphrey said he did. Afterwards when Mr. Caruth removed all the Republicans and did not need any of them, that shook confidence in his statement. I heard Mr. Weaver's statement, and that was followed shortly afterward by his proclamation, which I think our people construed as a menace to the peace of the community more than as having been made in good faith;—sounding brass, and tinking cymbals sort of proclamation; and it aroused the people more than if he had not made any proclamation at all. Now, then, when that was followed by the removal of these officers this excitement was renewed; and I believe the people of that community had come to a firm determination that the outrages committed at the previous June should not be repeated; and that the community believed that it was the purpose of the administration to repeat those same wrongs, especially in the precincts where those officers had been removed; and I believe this to-day—that is if it had not been for the action of Gov-

ernor Bradley in ordering out our boys and putting them in the armory, it would have resulted in bloodshed. I have not a shadow of doubt about it. I know the common talk was that it was the duty of the citizens to organize, and organize in such numbers that where any of these outrages were repeated at any precinct they could go to that precinct and resist it; and there was a spirit of resistance on the part of our citizens to what they believed was a premeditated purpose to repeat the outrages of June 12th. But as soon as the military was ordered out, and as soon as security was brought to our community, confidence was restored, and we had a quiet and orderly election; and I believe that the presence of the militia, which our people so understood, was for the purpose of quelling a riot, in event a riot should occur, and for no other purpose, restored confidence to our people, and prevented bloodshed, which I believe would have resulted. I believe the only people who were intimidated by the presence of the militia were the people who intended to repeat the outrages of June.

Q. In your judgment, was there any decrease in the vote of Louisville, on account of the presence of the regiment—Legion at its armory?

A. Not the slightest in my opinion. I did not see a single one of the boys that day at all. I was about a good deal in the central part of the city, and I do not believe the most nervous old woman in town was intimidated by anything done by the militia.

Q. There has been some evidence about the charge of Judge Evans; the charge has been put in the records. In your judgment did that charge of Judge Evans, of the United States Federal court, have any effect, and if so, what was that effect, upon your election?

A. I am not conscious of its having any effect at all. I want to say that I am a States Rights Democrat, and am opposed to any Federal interference in State affairs; and if I had been the Federal judge I should certainly not have taken that course. I do not think it had any effect.

Q. I am not speaking about whether it was right or wrong, but as to what was the effect of it?

A. I do not think it had any effect at all upon the election.

Q. What effect, in your judgment, did the granting of the injunctions by Judge Toney have?

A. I do not think it had any other effect than to compel those people to obey the law. I do not think it had any bad effect on the election at all.

Q. We have had a good deal of talk about what was in the newspapers. Did you see the Courier-Journal of Wednesday morning, November 8th? I hand you the paper with certain marked parts?

A. Yes, sir; I have seen that.

Objected to; sustained; exception.

Q. Were you ever a member of the Legion?

A. No, sir; never was.

Q. You had no military experience?

A. None at all, sir.

By Col. Breckinridge: I desire to offer the constitution of the league, and the list of members, which Mr. O'Neal said was accurate. I just simply offer it in this form, because it is an easy form.

By Mr. Kohn: You may consider it in, as far as I am concerned.

Cross-examined by Mr. Scott.

Q. Mr. O'Neal, whose conception was that Honest Election League, as far as you know?

A. Mr. Scott, I could not say who conceived the first idea of the league. It was a sort of spontaneous combustion movement.

Q. Well, were you consulted about it before it was formed?

A. Well, if you will tell me just when it was formed, I can probably tell you; I don't know. I and quite a number of gentlemen, discussed the necessity for such a league; but just when it was formed, or just how it was formed, I am not able to say, Mr. Scott; but I would tell you frankly, if I knew.

Q. Did you ever discuss the formation of that league with Mr. John H. Whallen?

A. No, sir; he has very little discussion of any kind with me.

Q. I will ask you if he wasn't a frequent and constant visitor at your office at the time, and before that league was formed?

A. No, sir; I state most positively, he was not.

Q. Did you ever discuss with him the management of the campaign?

A. Never in my life, sir.

Q. Did you, with Gen. Duke?

A. Never, in my life.

Q. Nor Milton H. Smith?

A. Never, sir.

Q. Or with the editor of the Post, Mr. Richard W. Knott?

A. No, sir; I never had a talk with Mr. Knott.

Q. Don't you remember that the Post and the Dispatch first made the suggestion, before this league had taken shape, saying that the people ought to meet together and ought to form this league?

A. I think it is very probable; they ought to have taken that position, and I think they probably did—yes, sir; but I won't say that unless you show me the article.

Q. You were a director of the Dispatch at the time?

A. From the very beginning; yes, sir.

Q. I will ask you if there is any arrangement made, by any corporation, or with the Republican party to pay the Dispatch so much a month?

A. I don't believe any such arrangement has been made. I

have heard such a charge made, but I have tried my best to find out the truth of it, sir.

Q. Was there, or not, a contract made by which the Dispatch people were to furnish so many copies per month during that campaign, or during the week?

A. If there was ever such a contract, I have no knowledge of of it. I hope they did have a real good one of that kind, but I never heard of it. Understand, Mr. Scott, as a director of the corporation, I have very little to do with its actual management, but if I did have, I would get all the contracts of that kind that I could, and I would take them even from the L. & N. railroad, if they would give them to me.

Q. I will say, I have stock in that company, and got up some twenty-five hundred dollars of the stock, but I don't want any of the money of the L. & N. railroad.

A. I think your stock is good.

Counsel for the contestee objects to the statement of the attorney or any statement of facts made by any attorney.

Q. Now, you have given us here the constitution and by-laws—the constitution of the Honest Election League; is there anything in that constitution about the defeat of Mr. Goebel, or the defeat of the Democratic ticket?

A. I never heard of it, sir.

Q. Don't you know that the main purpose of the formation of that league was the defeat of Mr. Goebel?

A. I don't know and don't believe that was the main purpose.

Q. Is there a man upon this list—take it and read it, who wasn't earnestly fighting Mr. Goebel—didn't fight him for the nomination, and didn't fight him from the beginning to the end?

A. That may be so, sir; I have never looked at it with that view.

Q. Select out of that large list, if you can, find five names that were not against him?

A. I don't say that Mr. Goebel had any number of this league—I am not able to say. I am not informed as to the politics of all of them.

Q. Look that over—you are generally familiar with them; read the names.

A. Yes, here is Judge Alex P. Humphrey

Q. He is a corporation lawyer, isn't he?

A. Yes, sir; he is like the rest of us; I think he takes all the cases he can get. Richard W. Knott—

Q. Wait a minute—Humphrey was against him.

A. I think so, sir; but he has never told me so.

Q. Knott is the editor of the Post?

A. Yes, sir.

Q. And against him?

A. Yes, sir.

Q. Go on, and just name the first ten?

A. John Stites.
Q. He was against him?
A. I think so, but I would not say positively.
Q. The next one?
A. Arthur M. Wallace.
Q. Well, he was against him?
A. Yes, sir. David W. Fairleigh is a Republican.
Q. He was against him?
A. Yes, sir. Robert Cochran.
Q. Against him, wasn't he?
A. Yes, sir; I think so, but I am not sure. James P. Helm—he was against him.
Q. Corporation lawyer, isn't he?
A. Yes, sir.
Q. And against him?
A. Yes, sir. George C. Norton; I am not positive about him. Is that the Norton of Robinson-Norton & Co?
Q. Against Goebel, wasn't he?
A. I rather think he was not, but I am not sure. I think he was for Goebel, but I won't be positive about that, sir. Basil W. Duke—I think Basil was against him.
Q. What is his business?
A. He is with the L. & N.
Q. What position does he hold with the L. & N?
A. I understand he is one of the attorneys.
Q. He is the lobbyist, isn't he, Captain O'Neal—principal lobbyist?
A. I don't know.
Q. Isn't it understood in the community generally?
A. Yes, I heard that charge against him.
Q. Go on.
A. The next one is John W. Green. I have no knowledge—
Q. Banker, isn't he?
A. No.
Q. Broker?
A. Yes, sir; I have no knowledge of his—
Q. Against Goebel, wasn't he?
A. I could not tell you, sir.
Q. Isn't that your understanding?
A. I have never had any understanding on the subject.
Q. E. L. McDonald?
A. I think he was against Mr. Goebel.
Q. Yes, and president of that league?
A. President?
Q. He was the president of it, wasn't he?
A. I am not sure whether he was, or not.
Q. Candidate on the Whallen ticket, wasn't he?
A. On what ticket?

Q. On the ticket known as the Whallen ticket.

A. I have never seen his ticket. If you will show me his ticket I will answer you. H. W. Bruce is chief counsel of the L. & N. railroad company. John W. Barr, Jr.—

Q. Republican?

A. He is a Republican. George L. Smith—I don't know who that is, sir.

Q. George W. Smith?

A. George Weissinger Smith?

Q. Yes; against Goebel, wasn't he?

A. I don't know.

Q. That is your understanding?

A. No, sir; I am rather inclined to believe—

Q. Didn't he appear as counsel against the Democratic officers here in Louisville a week or two ago in these contest cases?

A. If he did, that would not be conclusive that he was against Goebel.

Q. Go on—pretty good sign?

A. Mr. John Doerhoefer was for the Goebel ticket. Mr. Doerhoefer was nominated by the Honest Election League, or rather nominated by the committee of the Democratic party on the Honest Election ticket, is my recollection, and I believe subsequently ran on the ticket. He was a candidate on the Goebel ticket. I will say to you this, is in my judgment, if you want me to go on through.

Q. I don't care to take up the evening.

A. You will find most of our citizens were against Goebel; you could not go by —

Q. You mean most of the L. & N. attorneys and corporation lawyers?

A. My experience is, most of our people were against Mr. Goebel, in my judgment.

Q. Frankly, Captain O'Neal, you are attorney for the L. & N. yourself?

A. Never, sir; I don't believe—

Q. Don't you appear for it occasionally?

A. I want to make a statement there. I have never received but one fee from the L. & N. railroad company in my life, and I want to explain that; that was about eight years ago, and I divided that, share and share alike with my Brother Phelps over there; I want to say—

Q. What case was that in?

A. That was in the case of Captain Tyler, the man that was injured in the tunnel between Louisville and Cincinnati, with Captain Hagan on the other side.

By Mr. Phelps: I was attorney on the other side, assisted Captain Hagan, and we beat you?

A. I will have no difficulty in establishing it, because we were partners at the time. Captain Hagan was the attorney against the

L. & N. railroad company. Mr. Phelps and I were partners at the time, and it was an entirely honorable employment, and I want to explain now, Mr. Scott—

Q. I haven't any objection to your explaining it.

A. Just my connection with it, and I want to premise my statement by saying that there is not a lawyer, of my limited practice, in Kentucky that has fought the L. & N. railroad harder or oftener than I have, or continuing to do so. I have never been the attorney for the L. & N. railroad in my life, only in three cases. Col. Lyttleton Cooke, who is a warm personal friend of mine, and a much overworked man, who tries all of the cases of that company in court or nearly all, on three separate occasions, overkorked—I assisted him, at his personal request in three of his cases, one of which was th s case that I speak of; and two of the cases I assisted Mr. Cooke, as a matter of mere personal friendship, which I would return a hundred times if he would ask me; and I have never even sent in a fee, and I have never gotten but the one fee that I speak of, about eight years ago; and I don't believe there is a lawyer in Kentucky that has fought the L. & N. railroad harder than I have, and you can charge me with almost any other meanness, except being its attorney. I want to say, though, that I should be proud for employment in any legitimate work. I take employment, any honorable employment from any client that comes along.

Q. You have stated here a good deal about bloodshed—I have counted, I think you said three or four times, that in your judgment, bloodshed would result. Did you intend to kill anybody, or shoot anybody?

A. None in the world.

Q. You never armed yourself?

A. No, sir; I never carried a pistol in my life, and I hope the necessity will never arise when I have to.

Q. Who are these fellows, except Dick Knott, and Stewart in the Dispatch—who are the gentlemen, except those gentlemen in the press, that were talking about shedding blood; I want to know their names?

A. Now, I will give you just the situation; it would be impossible for me to sit down and give you name by name; it is an impossibility—

Q. Can't you give some name?

A. It was the people that would come into the office and go out of the office.

Q. Name a few of them.

A. I will try and do so; I don't know whether I can locate them or not. I think have heard Mr. Wickliffe talk about it. The general impression was this, if you will allow me to make—

Q. What Wickliffe is that?

A. C. A., I believe, is his name I have heard a great many people, but to identify a particular man—

Q. Can you name anybody else but Wickliffe?

A. To identify a particular man as saying a particular thing, it would be an impossibility. It was the people that would come into the office, and were greatly excited about it. I think I have heard Mr. Woodson say so repeatedly.

Q. That he was going to arm himself?

A. Oh, not at all, sir; but I want to give to the committee my position exactly in this matter. The people there felt that a great outrage had been done in June, and the freedom of election had been denied by the officials of the city, that ought to have protected the citizens at a free election in June, and the citizens of Louisville were determined that such thing should not be repeated. I believe to-day if it had not been for the militia, that it was the purpose of the administration to repeat the same thing, and I do not believe the citizens would have submitted to it; and I have heard the citizens repeatedly say, without any ability to say who, that they ought to be in sufficient force to go to the protection of any precinct where the police attempted to repeat the outrages of June.

Q. Now, you stated that in the direct examination, and I have allowed you to do it now, and I have no objection to your expressing your opinion, but what I am trying to get at is this—when you talk about the citizens and the people, didn't the Democratic party have a great many friends there on its side—Goebel adherents, there?

A. Oh, undoubtedly.

Q. When you say the people, do you mean to say that the people who were opposed to Goebel, intended, by force of arms, to go down there and take control of that election, and see that what they concluded was a fair election, was held; was that what they intended to do?

A. No, sir; I didn't mean to say that; I meant to say that our citizens were determined to have a free election, and a right to go to the polls freely, without police interference, and I believe they would have fought to do it; that is what I meant to say.

Q. Now, because in a party matter it was thought that they had acted arbitrarily, do you mean to say that these people thought that in the regular election they would do the same thing?

A. You misunderstand the situation, Mr. Scott, as it occurred in June. If you will allow me to explain that—

Q. I am not asking for that; you have referred to—

A. It was not a party matter. There was then no question in issue, when that primary was interfered with—there was no question about the regularity and authority of the committee that had ordered that primary—not the slightest.

Q. Now, you can't call the name of anybody, except Mr. Wickliffe, that said he was going out there and shed anybody's blood?

A. No; he didn't say that, and I would not put him in the posi-

tion of saying it; but I would meet citizens in my office, and on the street—

Q. Just name some of them, Joe?

A. I can't name them; I won't undertake to do it.

Q. You can't do it?

A. No, sir.

Q. There is only one man whose name you do remember, out of two hundred and fifty thousand—I believe you have that many population?

A. We are getting pretty big, but we don't claim quite that many; about two hundred thousand.

Q. Only one out of two hundred thousand.

A. No, sir; I won't say one of two hundred thousand; you can put it that way. You know, Mr. Scott, that it would be impossible. I didn't take charge of those cases, and I would not undertake to specify names.

Q. I believe you stated that you attended the meeting at the board of trade?

A. Yes, sir.

Q. Did you also attend a meeting where Mr. Denny made a speech, shortly before the election?

A. No, sir.

Q. You didn't hear that speech?

A. I am sorry I didn't—no, sir; I didn't hear it.

Q. You saw it in the newspaper?

A. I read an account of Mr. Denny being there at one time, and he made a speech, I believe.

Q. You read that in the newspaper?

A. I don't think I read his speech.

Q. Extracts from it, didn't you?

A. No, sir; I don't think I did.

Q. I will ask you if it wasn't very inflammatory?

A. I don't know; I never heard anything said about it.

Q. You didn't hear of it?

A. I don't recall ever having heard anything said about Mr. Denny's speech; and I don't recall ever having read the speech. I didn't read all those political speeches.

Q. Don't you remember this much, in substance, that he advised the people to arm themselves, to go there and stay there, and to wade in blood, if necessary, in order that they should carry that election—that their votes should be cast and counted for Mr. Taylor?

A. No, sir; I do not.

Q. You don't remember that?

A. No, sir.

Q. Let's go to the injunction; you say it was at what time of the day you heard Mr. Toney was to be at his office—wait a minute, I want to go back still further; tell the first intimation that you had, or information you had, that that suit was to be brought?

A. Oh, I had known the suit was to be brought, I should say the Saturday before.

Q. From whom did you get the information?

A. That was my own matter—my own suggestion, that it should be brought. I was the one to first suggest it.

Q. Who did you suggest it to?

A. I suggested it to Mr. Smith and my partners.

Q. Anybody else?

A. Mr. Helm and Mr. Bruce; probably, to Mr. Baskin or Col. Fairleigh.

Q. Do you mean to say that that was just gotten up by lawyers, without having a client, or consulting a client?

A. Certainly it was gotten up through consultation with Governor Brown, through Mr. Tevis, repeatedly.

Q. The first suggestion you heard was on the Saturday before?

A. I say, I am sure I heard of it as early as Saturday and probably Friday. We had that suit in contemplation from the very moment that those commissioners assumed to say to the election officers that we had no right to inspectors; we immediately had that suit in contemplation. I never for a moment intended that that suit should not be brought, the moment that Judge Pryor had written a letter saying that we were entitled to inspectors—the moment that those commissioners, without any hearing to us, took from us the right of commissioners, I began then to arrange to bring this suit.

Q. Well, now, I will ask you, as a matter of fact, if that harn't been agreed upon and discussed as much as ten days before the suit was brought?

A. Oh, no, not at all.

Q. Who drew the petition?

A. Either Mr. Helm or Bruce. Now, that is a mere guess on my part. It was drawn, I should say, by Mr. Bruce or Mr. Helm; I didn't draw it, although I consulted with them.

Q. Now, Mr. O'Neal, were they the attorneys for John Young Brown?

A. They were the attorneys for the Honest Election League, along with half dozen—it took about a dozen of us to watch those other fellows down there; and first one would do one thing, and then another another. Judge Humphrey was the lawyer in any matter that came up, so was I, and so were probably half a dozen others. We needed all that we could get.

Q. Now, you had been consulted about that suit, you had it in your mind to bring this suit, it had been agreed to bring the suit—I will ask you if you didn't know ten days before that suit was brought, that these commissioners had decided not to have Brown inspectors at the polls?

A. I did not, sir.

Q. How long before?

A. I never dreamed of such a thing as those commissioners denying to us inspectors, until after they had so instructed the election officers.

Q. Wasn't that ten days before; now, refresh your recollection?

A. No, sir; I don't believe it was, but whenever it was, I then began to counsel that we should apply to the courts to carry out the instructions given by the chairman of the State election commission, whenever that was.

Q. Now, be frank and candid in this answer; explain to this commission why it was that you waited until the day of election, until nearly noon of the day of election, when you knew that the other side had no notice, and could not dissolve it; why did you wait until that time, and take that advantage?

A. To be perfectly frank, we thought it was the wisest course to pursue.

Q. As a political expedient?

A. No, sir; as a matter of right. We had a right to those inspectors—we had a right—

Q. The Court of Appeals have decided that they were interlopers and had no right there?

A. I understand they did, afterwards. Understand, Mr. Scott, we can not know all the law in advance; we had the opinion of Judge Pryor to go on, I believe, at that time the opinion of Judge Hodge, and I had no doubt about our legal rights, but I am learning, as I am getting older, that I do not know all the law; if I did, I would not make these mistakes.

Q. Now, be frank, and say, isn't it a fact that you took that advantage, that you filed it at a time when you knew that you would not have to give any notice, and they could not dissolve?

A. I filed it at a time, to be perfectly frank with you, that that injunction would be most effective, to the interests of my client.

Q. And the greatest blow to Goebel's interests?

A. The greatest blow to those parties who tried to deny us the right to be represented in the polls and witness a fair count.

Q. I believe you stated, Mr. Boldrick was present?

A. Mr. Boldrick was present in court when we applied for the injunction.

Q. Now, I will ask you this question, if he didn't then and there request Judge Toney to wait just five minutes until Kohn and Phelps could be notified?

A. I don't think he said five minutes; he wanted to wait until some one could be notified.

Q. Didn't he say he could get Kohn and Phelps in a few minutes?

A. To wait a little while, he could get Kohn and Phelps.

Q. What did Judge Toney say to that?

A. Judge Toney said this was a matter—we were entitled to this relief; that the granting of this injunction could possibly do no

one any harm, that no man could be injured to have people to witness and have an honest count; that we were entitled, by law, upon the face of our papers, to this injunction. That he had read the letter of Judge Pryor, that said the Brown people were entitled to inspectors, and he felt like it was his duty to carry out that instruction of the chief executive election official of the State—to carry that instruction into effect, and if he had done any wrong, or had misjudged the law, let them give a notice and he would correct it.

Q. Didn't they explain to him that they could not do that?

A. No; I don't think they did, because they could do it.

Q. Were you present when they came in?

A. When who came in?

Q. Kohn and Phelps?

A. I think they came in just as I went out.

Q. Wasn't Judge Toney just hanging up his hat at that time—where was this conversation?

A. No; my recollection is—

Q. Just putting on his hat, starting to go?

A. My recollection is—I think you are a little in error there—the court room is separated from our clerk's office by a hall. After getting the injunction from Judge Toney, my recollection is I took it in to the clerk, was in the clerk's office a few moments, and when I came back Judge Toney had gone, and when I came back into the hall, and was leaving the court house, I met Mr. Kohn and Mr. Phelps, and they seemed to be in such a great hurry they could not see me; I guess I was too small.

Q. Did you hear anything that occurred between him and Toney—tell what it was?

A. Between who?

Q. Kohn and Phelps and Toney.

A. I didn't hear a word between them.

By Mr. Kohn: I think Mr. O'Neal is mistaken about one thing.

A. I don't think I am; when I came out of the clerks' office to go down, the officer, I don't remember where the officer was, whether I got him in the clerk's office—I have a distinct recollection of meeting Mr. Kohn and Mr. Phelps, and my recollection is the time I met them was when I left the clerk's office to go down stairs; it might possibly have been that I met those gentlemen when I left the court room to go in the clerk's office, but I think it was as I have stated.

Q. Now, we will get to another matter. Now, Captain O'Neal, do you know why Helm & Bruce didn't sign that petition?

A. Yes, sir; I will tell you that. I have my own ideas about it, and I will answer you frankly if they had consulted me, I would have said it would not have been a proper thing when it was done, for this reason.

Q. Why?

A. For months and months before this election, it had been cus-

tomary down there to charge every conceivable sort of a thing—of the Brown parties, we will call it, as having been accomplished by the Louisville & Nashville Railroad Co. If a man went out to speak for the Honest Election Democracy, why, he at once was transformed into a Louisville & Nashville Railroad Co. attorney, and those sort of stories were told, publications made, and people misled, without any regard whatever to the truth, or the fact of the matter; and anybody that came in contact with anybody else that ever had any connection with the L. & N. Railroad Co. was sure to be the creature of the L. & N. Railroad Co., and I should have advised them, because it would have at once—it would have at once if those gentlemen had signed this petition, been heralded abroad that this was a suit by the L. & N. Railroad Co., when I knew, as a matter of fact, that the L. & N. Railroad Co. had no more to do with that law suit than Aguinaldo or Oom Paul; and I want to say, Mr. Scott, that that had been the bugbear down there; our people had been misled by charges of that kind, and I knew that this would give an opportunity to those people to make such a charge, just as if I would say to-night—probably be reported to-night as saying that that wasn't an L. & N. Railroad suit, and Helm & Bruce didn't sign it, so as to conceal that fact, when I, in fact, say the L. & N. Railroad Co. had no more to do with it than the man in the moon.

Q. But the L. & N. railroad attorneys did bring the suit, and paid for the petition?

A. They didn't bring the suit.

Q. Not in bringing the suit, but they brought the suit and paid for the petition?

A. Those gentlemen occasionally have business for the L. & N. Railroad Co. They are not the L. & N. Railroad Co.'s lawyers; they are general lawyers; they are in general practice. There isn't a more reputable firm of lawyers in Kentucky, either as lawyers, or as citizens. They are in full practice, have one of the largest practices at our bar, and the L. & N. Railroad Co. is simply one of their clients. They have in all matters, just like Judge Humphrey, just like Dave Fairleigh, just like others—my own firm, been advising with Governor Brown, and the candidates with Governor Brown in all of these matters, and I would have advised these gentlemen not to sign this petition, because I knew that it would have been used justly or unjustly, to charge this case as having been brought by the L. & N.

Q. If Fairleigh was a Republican, what reason did he have for advising with Governor Brown?

A. He is a good lawyer; I will advise with him in any case.

Q. Don't you know, as a matter of fact, that the Honest Election League, and the Republican party, through their leaders, were cooperating together in order to defeat the Democratic party?

A. I will say to you in the utmost sincerity of my own heart that

I believe that the honest purpose of that league was to save our city from a disgraceful riot.

Q. Answer my question, please; isn't it a fact that they were so intertwined, that they were practically acting together to defeat the Democratic party—acting in conjunction with the Republican party?

A. I will say to you that a large number of those gentlemen were Republicans, and a large number of those gentlemen were in sympathy with the Honest Election League, Honest Election Democracy, and a large number of those men, I don't know their party affiliation at all; and I believe a good many Goebel men, because a great many of your best citizens were for Goebel. I believe those gentlemen joined with all these other men to prevent bloodshed and riot in our city on election day, and I believe that that was the honest purpose of that league.

Q. So that, so far as you are concerned, Whallen and Duke fooled you, and you honestly believed they were going out to get an honest election, and not to defeat the Democratic ticket?

A. I want to say this; if Whallen and Duke fooled me, and got me into that league, they deserved the thanks of the community. There are worse men than Duke and Whallen.

Q. Well, it was understood and known there, that Whallen was the authorized agent of the L. & N. in all political matters, wasn't it?

A. I have heard such charges. I will say this, Mr. Scott, I never was in the confidence of Mr. Whallen. I have been lately employed by him in the trouble he had, is the only business I have ever had for him in my life, and I am not in Mr. Whallen's confidence.

Q. Isn't that as well understood as that Basil Duke is their lobbyist?

A. I have heard that—yes, sir.

Q. Now, you said awhile ago speakers were sent out by this Honest Election League; where did they get that money to send out those speakers?

A. I think they got some from me.

Q. Did the L. & N. contribute any?

A. I never heard of it.

Q. Did Duke contribute any?

A. I don't know.

Q. Do you know who the biggest subscribers were?

A. I don't know who were, but I think if you take that list, every man on it contributed money to help defray the expenses of that league.

Q. They had branch offices, didn't they, with men in charge of them in every ward in the town?

A. I had nothing to do with that feature of it, if they did.

Q. Were you in the headquarters the day before election?

A. I never was in the headquarters at any time. I never was

in the headquarters—I tried to take as little active part in this last election as was consistent with my duties as a citizen. I don't think I was in the headquarters of any of the political parties during the entire election.

Q. Now, Captain O'Neal, you say the militia had a quieting effect on those people down there?

A. I think so, sir; what did you say?

Q. I understood you to say that the bringing of the militia there had a quieting effect upon the excited nerves of the people?

A. I haven't really a doubt about it, because they believed the police would behave themselves after they came there.

Q. And that would bring out the vote, the bringing of the militia?

A. I don't thing it had the effect one way or the other; it had a quieting effect, it stops this threatened bloodshed; we felt our home boys there would not do anything in the way of precipitating a riot.

Q. Now, Captain O'Neal, what I want to ask is this; this was a very bitter campaign, wasn't it?

A. Yes, sir; I would judge so.

Q. Wasn't it calculated to bring out the full vote on both sides?

A. Well, yes, sir; I think so.

Q. Now, if the bringing out of the militia had a tendency to bring out the people, how can you account for the falling off of the registered vote, and the vote cast, of about 10,000.

A. I don't think the militia had anything to do with the bringing out of the vote. I say that nobody was intimidated by the militia. Now, in our city, there, Mr. Scott, it is not like up here, where probably everybody votes; you can have the most exciting race, and a falling off of 10,000 votes is no large falling off at all. The people there in our city are shifting, especially the working class—are shifting their homes every little bit, and it is no excessive falling off at all.

Q. Now, don't you know this, without giving the exact figures—but don't you know, as a part of the current history of the town, that heretofore it has not fallen off more than ten per cent. from the registered vote?

A. No, sir; now, you go down in our city, Mr. Scott, and unless it is a city race, where there is a mayor running against a mayor, and all those fat things are to go as the reward of one or the other being elected, you can get out all of those votes, but there was no such race here at this time. I don't believe there were any races there that would bring out the people like a local race for the higher local municipal offices, and a falling off of 10,000 votes certainly don't indicate any undue intimidation, of people afraid to go out.

Q. You say that 10,000 out of 42,000—I believe the registered vote was about 42,000, wasn't it?

A. Yes, sir; it was a little more than that; I should say 45,000.

Q. About 42,300?

A. I am not positive, but I think it is about 45,000, is our vote.

Q. Did you ever hear or know of that great falling off, nearly twenty-five per cent. of the registered vote, in any race?

A. I will undertake to say, as a mere matter of memory, that I can find you a good many races there where the vote would not reach 30,000 votes.

Q. Then there would not be more than 34,000 or 35,000 registered?

A. Not in that proportion; forty odd thousand; it takes a warm local race for the mayoralty and larger officers to bring out that large registered vote.

Q. Now, you say that the threats of these newspapers, especially the Post, Dispatch and Commercial of the trouble at the polls, the speech of Denny, and such as he—

A. I don't say that.

Q. Wait a minute, now—the bringing of the gatling guns and the militia, the interference of Toney with his deputy sheriffs, and his injunctions, and the threatened interference of Judge Evans, didn't have anything to do with the falling off of that vote? Do you say that to this committee, all those things together?

A. I don't say, Mr. Scott, that there were any threatening letters in the Post and Dispatch; there were letters—I mean articles, in all of the papers; and I don't see how the injunctions of Judge Toney—I don't believe that they had any such effect. Those injunctions were not issued until about the middle of the day, and I doubt very much if the voters themselves knew anything about that injunction until the polls closed at four o'clock.

Q. Don't you know, Captain, that in cities, where there are a large portion of the voters in factories, that they wait until dinner time, and vote in the afternoon?

A. Yes, sir; and they could not have heard of that injunction.

Q. Didn't that go like wild fire; wasn't there a special edition of that?

A. I don't think so.

Q. Wasn't there an edition at one o'clock?

A. Yes, sir.

Q. Didn't that contain notice of it?

A. You ask me if I didn't think anybody would be intimidated because the injunction ordered that at four o'clock inspectors were to be allowed in there.

Q. That is not my question. I asked you if there wasn't a one o'clock edition of the paper?

A. I think so.

Q. And didn't they have the news of getting out those injunctions?

A. Yes, sir; and those injunctions were that nothing was to be done until four o'clock; and the only thing was that those men

should allow, at four o'clock, inspectors in the polls. I don't see how that would affect anybody's vote before four o'clock.

Q. Wasn't it also published that with the militia, Governor Bradley was in the city, to force or put in these inspectors by those injunctions?

A. No; I don't think that occurred until at the time or about the time of the closing of the polls, and that militia was never upon the street, according to my information and my inquiry—never upon the street until two hours after the polls closed.

Q. That isn't the question; wasn't it published broadcast, that Governor Bradley was in the city for the purpose of taking a hand, and that he was personally in command of the troops in the field, and that if necessary, in order to preserve the peace a the polls, and to have what they considered a fair election, the troops would be sent to the polls?

A. It was published in the newspapers that Governor Bradley had ordered the militia into the armory, just as it had been published, according to my recollection, and just as it had been done for years before. I was chairman of the Democratic committee in 1897, and precisely the same thing was done.

Q. Bradley was Governor then, wasn't he?

A. If he was, he did the right thing.

Q. I say, wasn't he the Governor—Republican Governor?

A. Certainly.

Q. And Castleman then was fighting the Democratic ticket?

A. Who was?

Q. General Castleman was against the Democratic ticket?

A. I think not; if he was, I don't know it. I think he was for the Democratic ticket.

Q. All he had was a guard at the armory?

A. I don't think that is correct; if he only had a guard at the armory, the general public, including myself, didn't know the distinction betwen what he had then and what he had now. Until I heard Mr. Phelps ask that question of Mr. Gibson, I was under the impression, and am still under the impression—however I, of course, may be mistaken—that precisely the same course has been followed in all of these previous years, not only 1897, but 1896, and 1895, and 1894, and frequently in other years. Now, if it was only a guard, I don't think the public knew anything about that. We always understood we had the militia at the armory for the purpose of quelling a riot in the event a riot occurred, and for no other purpose. We had confidence in Governor Bradley that this militia would not be used except in the event that there was a riot, and after the militia was put in the armory, our people felt there would be no riot.

Q. Now, you say to the committee, and then that is the last question, that none of these things I have mentioned, separately, or

all of them together, would, in your judgment, prevent a timid man from going to the polls?

A. Now, Mr. Scott, will you repeat those things, you have got them sort of mixed up, at least with me; I don't understand them.

Q. Inflammatory speeches by men like Denny?

A. Let me see them, as you refer to them. I haven't seen them.

Q. As you saw them, or remember them, or heard them?

A. I remember about the gatling gun.

Q. Here it is, Captain, headed, "Blood. Denny tells Republicans to wade knee-deep. Says other violent things. Declares he will lead them if they need him. Governor Bradley also speaks. Will make another address at the Auditorium on Monday evening. Wood and Yerkes. Wade through blood knee-deep, if necessary, next Tuesday, were the incendiary instructions given to Republicans and Brown Democrats by George Denny, of Lexington, in a speech last night at Music Hall.

"The speaker stirred the audience up to an intense state of excitement and appealed to their passions by telling them that they were to be slaves and robbed forever of their right to vote. He cited the battles where Americans had died for principles which they believed to be right; to bloody elections in other States, and urged them to go to the polls prepared to fight for their independence;" and going on and giving other extracts.

By Col. Breckinridge: You don't contend those head lines were furnished by George Denny, do you?

A. I may have read that, Mr. Scott; it is probable that I did; I read the Courier-Journal.

Q. (Mr. Scott resumes.) Mr. George W. Denny began his speech by saying that if there was not a fair election and an honest count there would be a fight. He said that an effort was being made to rob the people of the great State of Kentucky of their suffrage. "The Democrats, headed by Goebel, are going to commit a crime that is worse than stealing your pocketbook or your property. Will you stand it? I want you to go to the polls and stay there. I want you to go into those booths and tell the election officers that you are going to have a fair count or know the reason why. Do you remember what followed some years ago in Chicago when one party tried to rob the other of his rightful vote? The election officers were shot to death and four others thrown into the lake to drown. And there hasn't been a steal there since.

"Talk is cheap. The time for talk has passed and the time for action has come. If we can not cast our votes and have them counted, then I say revolution. I was born in Kentucky. My father, my grandfather and my greatgrandfather were born on Kentucky soil and their ashes rest here to-day. They were men who loved liberty and independence and men who were brave and true. They imparted to me the same love for liberty and independence and the spirit of the words rung out by the old liberty bell in

Philadelphia is still alive in my breast. I am no carpet-bagger, and, by the grace of God, I shall exercise the inalienable right which I possess and will see to it that my vote is rightly counted.

"Patrick Henry said, 'Give me liberty or give me death,' and I say these same words to you to-night. I would rather die than to let any man rob me of my vote. A time comes to every man to die, and I am willing to accept death now rather than to submit to an open robbery of my elective franchise. 'Kentuckians have ever been brave and true. They knew what to do when they encountered an Indian on the dark and bloody ground; they knew what to do at New Orleans when they pressed the battle under the leadership of Jackson and drove the enemy back; they knew what to do in the civil war; they knew what to do on San Juan hill under the terrific and deadly fire of the Spaniards, and I tell you they will know what to do at the polls next Tuesday.' 'Will you stand by us if we do what you say?' came a voice from the audience.

"'Yes, I will stand by you,' thundered Denny. 'I am not the kind of a man to say, 'Go on, boys,' but I'll say, 'Come on, boys, and follow me.' I want to tell you now that we must do our whole duty to the Commonwealth, and wade through blood knee deep, if necessary, in order to perpetuate its place among the States of the Union."

Then follows a speech by Governor Bradley at Lexington. Now, do you say that speeches like that were not inflammatory and incendiary, and that they would not deter timid men from going to the polls?

A. I would certainly say that a speech like that was inflammatory, but I would not think that a speech like that would deter our people from going to the polls.

Q. Then please tell us what would, in your judgment, if this speech, and the troops, and the gatling guns, and other speeches, would not.

A. You ask me what would—I can only speak about the future from the past—the police and fire department. I do know that they would—they had done so.

Q. You think they would deter people, and the militia would not?

A. I think, Mr. Scott, that in violation of our city charter, our police and fire department had gone into politics and were acting under influences that threatened the peace of our community at that election; and as I have stated before, I believe that if we hadn't had the militia in that emergency, to have caused the people to have confidence that no riot could take place there, that our people would have prepared themselves to have resisted this outrage on a free election.

Q. Now, Captain O'Neal, I never asked you that, at all, and you continue going back to the June convention; but from that time on up until this election, tell any act of any one policeman, or any

chief of police, or any members of the board of safety, or the mayor, which convinces you as a reasonable man, and a lawyer, that they intended to go out and take charge of this election.

A. Now, if you will let me answer that, I believe I can give my own idea about it.

Q. Some act, now; some fact.

A. Now, if you ask me to name a particular act of a particular policeman—

Q. That is what I want.

A. The time of that particular policeman would not come until the 7th of November; his time to act hadn't come. But I can tell you of the conditions that did occur, which led our people to this grave apprehension of a riot on election day, if you will let me; but I can tell you of events that did occur which gave our people the right to believe that the police were going to repeat their former outrage.

Q. I am talking about the general election, on up through the summer and fall, up to shortly before the election; please tell me of any act of any member of the police force, or the men that had control over the police, that gave you the opinion that they were going to try to seize the election and run it?

A. One of the acts was the proclamation of the mayor forbidding —showing that these people—the proclamation, if you will read it there, showing that the people did intend, if necessary, to go to the polls and protect themselves against a repetition of these things.

Q. Go on—did they intend to go armed to the polls?

A. It does not say whether they would go armed, or not.

Q. Excuse me, now; I don't want to put you in a false light; it does say that.

A. Then there must have been a sentiment of that kind in the city.

Q. Wasn't it his duty to break it up?

A. It was his duty to do it, but somehow the people didn't think he had any idea of doing it. Now, the thing that caused the most apprehension, when a short time before this election, without any notice, following close on to this proclamation, when two of the election commissioners removed the Republican officers from seventy-nine districts or seventy-nine precincts, or seventy-nine—

Q. Did the police do that; my question is, did the police do that?

A. No, the police didn't do that. I don't know of any act that any policeman did, Mr. Scott, because there was no time when they could have acted.

Cross examined by Mr. Kohn:

Q. Mr. O'Neal, about this Toney injunction; the board of commissioners decided in October, the 23d of October, did they not, or the 25th of October, that they would not allow Brown inspectors in the polls?

A. I don't remember, Mr. Kohn, but I don't think it was back that far.

Q. Well, it was more than a week before the election wasn't it?

A. I don't think it was more than a week before the election. My idea is, without pretending to be accurate, that it must have been about Thursday or Friday before the election. Now, I may be mistaken about that.

Q. Now, Mr. O'Neal, did you order these petitions and blanks to be printed?

A. Yes, sir.

Q. Who paid for that printing?

A. Without knowing, without seeing the payments made, I am satisfied the Honest Election League paid for it.

Q. The Honest Election League paid for it?

A. Yes, sir.

Q. Paid for printing the petition of John Young Brown against Weaver and others?

A. Yes, sir; undoubtedly, because one of their objects was to have inspectors of all parties in the polls.

Q. I understand you to say that you didn't see Mr. Phelps and I go to the court room until after Judge Toney had left; was that correct?

A. No; I said I don't remember whether I met you as I left the court room to go to the clerk's office, or met you as I left the clerk's office to go down stairs.

Q. You met me as you left the court house, but it is not a fact that Mr. Phelps and I got into the court room before the judge had left the court room, and as he was about to take up his hat, and said to the judge, "We understand there has been an application for an injunction?" He said: "Yes, and I have granted it." "Well," I said, "we desire to be heard." He said, "If you want to see me, come over to Mr. Walker's office."

A. Mr. Kohn, if such a thing occurred, it is quite probable that you all got there before the judge left, but I am absolutely certain that I wasn't in the court room when you made any talk with Judge Toney after this injunction was granted.

Q. No, I say you were not there afterwards, because you went into the clerk's office. Who served these processes for you?

A. One of the deputy sheriffs served it on—

Q. I mean on the election officers; didn't you have about twenty-five or thirty men?

A. No, sir.

Q. How many men did you have?

A. I don't think—our object was to give—the law provides that any man against whom an injunction is taken, or who is enjoined, is bound by the injunction from the time he has knowledge of it, and, therefore, there being such a great number of those election officers, the plan that I devised and carried out, was to give to our inspectors,

each one, a copy of this injunction, and let him serve it himself; and while he was not an official, with authority to serve, yet the men that got that injunction, and had notice of it, and knowledge of it, was bound by it.

Q. Then you gave these injunctions that you got out—under the guise of temporary restraining orders of injunction, wasn't it?

A. That is right.

Q. To your inspectors, the Brown inspectors and the Republican inspectors, to deliver, didn't you?

A. We gave them to Brown inspectors.

Q. Didn't you also give them to Republican inspectors, to Bob Kinkead and other gentlemen that belonged to that party?

A. If Bob ever got one, he didn't get it from me, and I don't know who he got it from; but our object was to give them to our inspectors and let them go to these officers or inspectors and hand it to them, knowing that the law bound those people from the time they heard of it, no matter in what way they heard.

Q. Isn't it a fact, Mr. O'Neal, that the Brown people, known as the Brown Democrats, and the Republicans, were working together?

A. No, sir.

Q. For one common purpose?

A. I most positively protest against it; it is not true, as far as I am concerned, and as far as I believe; and I don't believe that it was with the body of those people. Now, a great many Democrats, in my judgment, did vote for the Republican ticket—it is possible, but I am not that kind of a Democrat; I never did it, and don't expect to do it.

Q. I didn't ask you about your own vote; I asked you if it wasn't generally understood they were working together?

A. Not at all, sir.

Q. And I will ask you if the Honest Election League that you speak of didn't work in conjunction with the Republicans, and the employes of the L. & N. Railroad Co., too, and for that purpose established in each ward in the city a branch office furnishing that branch office with the papers, letter heads, envelopes and ammunition to carry on the business—correspondence, in every ward in the city of Louisville?

A. This is the first time that I ever heard of any such thing. I never heard of it before; so far as the Brown people are concerned, I don't believe it exists. I never was in the Republican headquarters in my life. I had no conferences with them about their affairs, and I was simply in this election because I believed it was for the interests of the Democratic party that the methods of the Music Hall Convention should not succeed.

Q. I will ask you another question; do you know anything about room 405 in the Equitable building being used a day or two before the election for the purpose of distributing money?

A. Never in my life—I never was in it in my life, and I never got a cent.

Q. I didn't expect you to get a cent of that; did the Brown people have any one there distributing money?

A. I never heard of such a thing.

Q. Did the Brown people pay money out to speakers throughout the State?

A. If they did, I never heard of it, sir. I never made a speech in my life for the Brown people, not one. But I expect I would have advised them—we sent a good many young men of very limited means, out, and if the Brown people did not pay their expenses, and pay them for their time, I have not as much respect for the Brown people as I used to have.

Q. Now, I will ask you, Mr. O'Neal—you have been practicing law for about twenty-five or thirty years, haven't you?

A. Yes, sir.

Q. Have you, in all your experience, ever known or heard of a Federal judge, before a State election, giving a charge to the grand jury relative to that State election?

A. I don't remember, Mr. Kohn, the exact language of the charge.

Q. Or any charge on the subject of a State election?

A. I know a good many lawyers take the same view of the matter that Judge Evans takes. I know that Judge Gresham—

Q. I didn't ask you that.

A. I am going to state how I know.

Q. I asked you this question, whether you, as a lawyer, and a citizen of Louisville, ever knew a Federal judge, until Judge Evans gave that charge in November, 1899, to give a similar or any charge relative to a State election?

A. I do not think I ever heard of such a thing; but the question has been raised in other States, because I know of the decision of Judge Gresham is favorable to your view of the case; and I say now, that I do not believe, for one moment, that it is right for the Federal court to take any sort of control over our State affairs, although I have not looked into the legal question, and do not pretend to pass on it.

Q. I did not ask that, either; I simply asked you whether you ever heard of it before in the city of Louisville?

A. Never in the city before.

Q. Did you ever hear before in the city of Louisville, or elsewhere, of a Federal judge instructing upon a Federal statute as to a State election, and holding over his grand jury until after the election to consider the matter?

A. I never did before, but I don't believe any election is injured—substantially injured, by a judge saying that he is going to punish frauds at elections.

Q. Now, I will ask you, Mr. O'Neal, if it is not true, as a matter

of fact, that the people of Louisville were greatly in fear and apprehension, and stayed away from the polls in large numbers, because of the feeling in our city that there would be trouble at the polls, because of police interference, and because of their fear that there would be military interference and Federal interference?

A. Not the slightest, Mr. Kohn; after the military was ordered into the armory for the sole purpose of protecting the city against riots, the feeling of our people was, there would be no riots.

Q. You mean the people you came in contact with, who came in contact with the militia, and in whose interest they were ordered out?

A. I don't believe they were ordered out in anybody's interest, or in the interest of any particular people; they were there for the purpose of preventing a riot.

Q. Did you ever hear or know of the militia being ordered out on election day before?

A. If you mean by being put in the armory—

Q. I mean ordering it out.

A. During the election?

Q. Yes, sir.

A. No; I never did, and I didn't hear it on that day.

Q. Did you ever hear of two hundred and thirty-six men being put there on election day for that purpose before?

A. As I say, I never heard the number mentioned before, one way or the other.

Q. Did you ever read before a publication in the newspapers that there would be militia, under officers in the armory in command of the chief executive of the State?

A. I don't know anything, except the militia was ordered in the armory.

Q. Did you see the publication that a gatling gun had arrived at the armory at twelve o'clock the day before?

A. I did hear that.

Q. Did you ever know of that before in the city of Louisville?

A. No, sir.

Q. Did you ever know before that United States marshals would be there, and if any one was aggrieved, to go and have the people arrested—in charge of a State election before in your life?

A. I don't know anything about it at all.

Q. Those publications were made time and again, were they not?

A. I have no distinct recollection, especially about the rumors you speak of—the gatling gun. I don't remember the publication that United States marshals would make arrests, on complaints made.

Q. Weren't there four or five arrests made by United States marshals on that day?

A. Yes; but I don't remember the publication.

Thereupon the board adjourned until Thursday, January 25, 1900, to two o'clock, p. m.

ATTEST:

SAMUEL J. SHACKELFORD, *Clerk.*
By ROBERT L. GREENE, *Deputy Clerk.*

2030

TRANSCRIPT OF RECORD.

Vol. 4.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

603

WILLIAM S. TAYLOR AND JOHN MARSHALL,
PLAINTIFFS IN ERROR.

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 16, 1900.

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Frankfort, Ky., January 25th, 1900.

The board met pursuant to adjournment at 2 o'clock p. m.

B. W. Porter, a witness, being duly sworn, and examined by Governor Bradley, testified as follows:

Q. Where do you reside?
A. In Martin county.
Q. Do you hold any office of any sort up there—to hurry it along, were you one of the Election Commissioners of that count?
A. Yes, sir, election commissioner.
Q. For which party were you appointed?
A. Democratic party.
Q. Did you notice the ballots on election day?
A. I can't say that I did take any particular notice.
Q. Did you notice them in counting the ballots?
A. No, sir. What do you mean by that question?
Q. Did you notice the texture of the ballots in counting them, as to whether or not they were ballots that you couldn't see how people had voted through them, on the outside or not?
Objected to.
A. When we were comparing the ballots?
Q. Yes.
A. I kept tally—kept the tally sheet; consequently I didn't pay very much attention to the stubs, but the two ballots that were returned.
Q. You don't know anything about it?
A. I can't say that I do.

James Drake (Wolfe County), being duly sworn, and examined by Governor Bradley, testified as follows:

Q. Are you an officer of any sort in your county?
A. Deputy clerk.
Q. Have you those stub books with you?
A. I have.
Q. Will you produce them?
A. Yes, sir.
A Committee: You said "Wolfe county"?
A. Wolfe county.

Gov. Bradley: Do you know where these ballots were printed?

A. I don't know that I know of my own knowledge.

Q. How do you know, without stating what you know —how do you know—how did you get your information?

A. From the clerk.

Q. The clerk is not able to come here, is he?

A. He sent affidavits to that effect.

Gov. Bradley: We think we ought to be entitled to that proof; this is his deputy.

The chair held it was proper.

Q. Where were the ballots printed?

A. The Jackson Hustler.

Q. Is that Jackson in Breathitt county?

A. In Breathitt county.

Q. Did you notice the texture of these ballots on the day of the election?

A. I noticed the one that I voted, was all—the one I voted.

Q. Have you any of the ballots with you?

A. I have not.

Q. There were none preserved?

A. None.

Q. Did you notice the texture of the ballots, you say you noticed the one you voted?

A. Yes, sir.

Q. What did you notice about that?

A. After I went into the booth, and voted, and as I came out, I noticed that I could see the stencil mark.

Q. How could you see it, from the inside or the outside?

A. No, sir, from the outside of the ballot.

Q. How did you fold your ballot?

A. I folded it once, according to the instructions of the clerk, doubled up that way (indicating).

Q. Did you notice any other ballots except your own?

A. I did not; I didn't see any other except in the stubs, I was not in there only long enough to vote.

Cross-examination by Mr. McQuown:

Q. You were deputy clerk, you say, in Wolfe county?

A. Yes, sir.

Q. Where were those ballots printed that were used in Wolfe county?

A. I stated that the clerk told me they were printed at Jackson—by the Jackson Hustler.

Q. You don't know of your own knowledge about that?

A. I do not.

Q. You didn't examine any other ballot except your own?

A. None other.

Q. Well, now, what do you say, that you could see how you voted yourself?

A. Yes, sir, I saw the stencil.

Q. As you came out of the booth?

A. Yes, sir.

Q. When you had it in your hand?

A. I had it in my hand, yes, sir.

Q. Is that the only one you saw?

A. The only one.

Q. Have you any of the ballots at all?

A. No, sir.

Q. Is this the stub book, or one of them?

A. Yes, sir.

Q. From which the ballots were taken in that county?

A. Yes, sir.

Mr. Phelps: You want to file this, don't you?

Gov. Bradley: Certainly.

Mr. Phelps: We don't object to it.

Mr. McQuown: You have produced a stub book of the Campton Precinct No. 3 of the election held November 7, 1899, in Wolfe county; I will ask you to file it as a part of your testimony?

A. I have instructions from the county clerk to bring these back; I don't know.

The Chairman: You will be protected; they will be taken care of.

A. I will be protected; just so I am protected, is all right.

Q. Were all the ballots used in that county or all of them shown in the stub books, the same quality of paper as the stub book which you have referred to and filed?

A. Yes, sir, I think they are.

Q. You have all the stub books here?

A. All the stub books here, yes, sir.

Q. And so far as you know they were of the same quality of paper?

A. Yes, sir, of the same quality.

The Committeeman: One of them is sufficient?

Mr. Phelps: Yes, sir.

Mr. McQuown: What precinct did you vote at?

A. Campton Precinct No. 3.

Q. Who were the election officers there?

A. C. C. Williams, Benjamin Sewell, Jacob Fultz, he has an initial, I don't know whether it is J. C. or not; and Richmond Holland.

Q. Are any of those officers here to-day?
A. Yes, sir.
Q. Who?
A. Benjamin Sewell and C. C. Williams.
Q. Were they Republican or Democratic?
A. Republicans.
Q. Are the Democratic officers here?
A. No, sir, I suppose not.
Q. Which one did you hand this ballot to that you voted?
A. I am not sure; I believe it was—well, handed it to the clerk, Fultz.
Q. Is he here?
A. No, sir, he is not.

Cross-examination (continued) by Mr. Phelps:

Q. I understood you that the only ballot you saw that was subject to criticism was your own ballot?
A. All I know anything about.
Q. The only one you know anything about?
A. Yes, sir.
Q. When you put the stencil on that, were you in the booth?
A. Yes, sir.
Q. What was there there on which you laid your ballot when you put the stencil on it?
A. I am not sure, but I believe, I think it is a plank.
Q. A plank board?
A. I think so.
Q. Of course, when you put the stencil there, you knew what device you voted under?
A. Yes, sir.
Q. During that time?
A. Yes, sir.
Q. You knew what device you voted under?
A. Yes, sir.
Q. After you folded it, you thought by looking at the ballot, you still knew?
A. Yes, sir.
Q. But I suppose you had in your own mind how you had voted?
A. Certainly.
Q. It took very little help to help you locate how you had voted?
A. It didn't take any help to know how I voted.
Q. You thought then, too, you could see how you had voted?
A. I know I saw how I voted.

Q. You saw how you voted inside of the booth too, didn't you?

A. Yes, sir.

Q. What kind of a plank did you have on which you laid the ballot?

A. I am not sure; I never paid particular attention to that.

Benjamin Sewell, a witness, being duly sworn, and examined by Governor Bradley, testified as follows:

Q. Where do you live?

A. Campton, Wolfe county, Kentucky.

Q. What is your profession?

A. Postmaster at Campton, and attorney-at-law.

Q. Were you there on the day of the November election, 1899?

A. Yes, sir.

Q. Did you hold any office?

A. Sheriff of the election.

Q. At what precinct?

A. Precinct No. 3, Campton.

Q. Did you notice anything concerning the texture of the ballots that were voted there on that day—if so, state what it was?

A. Well, I didn't particularly notice anything about it until after we commenced to count the votes, and then before the ballots were unfolded, we could see if a person had voted under the rooster or under the log cabin, we could tell it, and my attention was first called to that fact by reason of the Democratic judge when one was voted under the rooster he would give a kind of a shout, and when it was put under the log cabin he would frown—give a kind of a frown.

Q. He shouted at the sight of the rooster?

A. Yes, sir.

Q. And frowned at the log cabin?

A. Yes, sir.

Q. Well, now,was the ballot unfolded when he did that, or what position was it in?

A. No, sir, it was that way when he first took it out of the ballot box.

Q. How was it that he could tell that?

A. From the back of the ballots.

Q. How—couldn't he or not distinguish the device from the back of the ballot? Couldn't he tell by looking at the back of the ballot, for instance, that this was the

log cabin at this place, and this is the rooster at this place?

A. We could tell from the position—we could tell where the log cabin was, and the rooster, tell what position on the ballot they were.

Q. How could you tell from the back of the ballot how it had been voted?

A. We could see the stencil mark from the back of the ballot?

Q. You could see the stencil mark from the back of the ballot?

A. Yes, sir.

Q. How then did this shouting and frowning occur?

A. I don't know how it is at all.

Q. More than once?

A. It was the in the majority of the ballots and the counting of the same.

Q. That was the Democratic judge?

A. Yes, sir.

Q. What was his name?

A. Richmond Holland, and the clerk also, C. C. Fultz.

Cross-examination by Mr. Phelps:

Q. Has there been any ballot from Wolfe county produced?

Judge Yost: They have not been filed. This is the first time we struck Wolfe county at all.

Q. I believe that during the voting in the day you didn't see anything at all about anybody's vote?

A. No, sir.

Q. And didn't have your attention called to the matter at all?

A. No, sir, I didn't notice.

Q. The only time that you found out anything was after the voting was over, when the count began?

A. Yes, sir.

Q. And after the voting was over, it was the purpose of the officers to ascertain about the vote, wasn't it?

A. Yes, sir.

Q. So that while these different various people, the voters cast their votes, you didn't see or notice anything at all during the voting?

A. No, sir, I don't know that I could tell how they voted then.

Q. But when you opened the box—

A. I could if I had noticed particularly.

Q. You think you could if you had noticed?

A. I know I could.

Q. You said awhile ago, if I understood you right, that in looking at the back of those ballots you couldn't see the emblem?

A. No, sir, I only knew where it was from the position on the ballot. I didn't say I could see the emblem, but I knew where the emblems were. I didn't try to see the emblems; it might be I could have seen them, if I had noticed.

Q. I think you and I understand each other perfectly. You say that in looking through, you couldn't the emblems?

A. No, sir.

Q. But you knew about where the emblems were located, and when you could see the stencil you could tell from the location about under which it was?

A. Tell good enough where the emblems were—

Q. But you couldn't see the emblems through the ballots?

A. (Continuing answer to preceding question) I could and the Democratic officers could also.

Q. You couldn't see the emblems through the ballot?

A. No, sir, I have answered that question.

Q. You thought you knew about where the location of the respective emblems were?

A. I knew where the rooster, and the log cabin was, well enough, and the Brown emblem.

Q. You knew the location of the emblems. Will you give them in order to the committee as they were located on the ballot?

A. I can give them so far as I was interested in the emblems.

Q. Give all of them, if you knew their location?

A. I didn't say I could give all of them. The rooster camefirst on the ballot, the Brown Democratice emblem next, and the log cabin next. The fact of the matter is the log cabin was the only one I cared anything about.

Q. The truth about those ballots, the truth about the ballots was that by looking through you couldn't see the printed emblems on them at all, could you?

A. I did not do it, I don't know whether I could or not.

Q. You saw in some cases where the stencil was pressed?

A. Yes, sir, in the majority of cases, I did.

Q. Will you tell the gentlemen of the commission what provision was made in the booths for laying the ballot down in order to stamp them?

A. A stamp which they had, and stencil in there, an ink pad, and a rough—some kind of a plank, I don't know

whether it was rough or smooth now; some kind of a plank.

Q. Why did you say rough a minute ago and say now you don't know whether it was rough or not?

A. I don't remember.

Q. Was it your idea in saying rough because you didn't remember it the reason you said it was rough?

A. It was a kind of a slip of the tongue, it was a piece of plank, I don't know whether it was rough or slick or what at this time.

Q. So evidently, the trouble, if any there was there, was in the ink or the stencil, because the ballot was thick enough so you couldn't see the emblems at all?

A. I don't know what the trouble was.

Q. You agree with me, don't you, that that paper was thick enough so you couldn't see the printed emblem at all?

A. I didn't see it, I didn't try to see it; I don't know whether I could have seen it or not.

Q. You won't swear here that you could see it?

A. I won't swear that I did. I don't know whether I will swear that I could or not. No, I won't.

Q. What office were you filling?

A. Sheriff.

C. C. Williams, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live at Campton, Wolfe county.

Q. Were you there on the last election day, November, 1899?

A. Yes, sir; I was one of the Board of Election.

Q. What office did you hold?

A. I was one of the judges of the election.

Q. At what precinct?

A. Precinct No. 3.

Q. What do you call it?

A. Campton.

Q. Did you notice the texture of the ballots on that day as to whether they were thin or the contrary?

A. Yes, sir, I noticed them.

Q. Well, what was the character of the ballots that was voted there that day?

A. Well, they were a very thin ballot.

Q. How thin were they?

A. They were thin enough—that when they were

doubled you could see the print of the stencil mark through them.

Q. How many of those did you see the stencil mark through?

A. Well, I reckon I handled nearly every ballot in that box—pretty much every ballot.

Q. How many of them did you notice?

A. Well, I noticed pretty much all I handled in that condition.

Q. Was there any talk about the stencil mark showing through on that occasion?

A. The other judge of the election, he called my attention to it, he doubled up—he tore off the secondary stub and would finish folding the ballot. They generally brought the ballot doubled once, and in tearing off that secondary stub he would hold it up and called my attention to it, and I could see as well as I could locate the devices, I would see pretty much how every man voted.

Q. Could you or not see these ballots when you took them in your hand that way and with them doubled up once?

A. Yes, sir, the stencil mark run through, that is, the ink,

Q. Who was the Democratic judge there with you?

A. Mr. Richmond Holland.

Q. Did he say anything about seeing the vote or not seeing it?

A. Yes, sir, he told me he could tell how every man voted when it was doubled three times, he told me that himself.

Q. How every man voted when it was doubled three times?

A. Yes, sir.

Cross-examination by Mr. Kohn:

Q. You didn't see any ballots being doubled three times that you could tell how they voted?

A. I didn't pay any attention to that, he would fold up the ballots, he would hold it up to me and look at me.

Q. All you know about it is that you could see the stencil mark?

A. Yes, sir, the ink from the stencil mark.

Q. By reason of the ink—

A. Would run through it.

Q. Run through the ballot?

A. Yes, sir.

Q. In that way you noticed it?

A. In that way I noticed it enough when he would

sort of hold the ballot up, I could tell pretty much the location of the device.

Q. By the location of the device upon the ballot?

A. Yes, sir.

Q. You knew about where the device was? You knew pretty much where the location of the log cabin was and pretty much where the rooster was?

A. Yes, sir.

Q. And with this ink running through there, you could see, by reason of the device, you would know about what the man voted for?

A. Yes, sir, the ink off the stencil, would know it.

Q. That is the only way you could do it?

A. Yes, sir.

Q. What kind of ink was it?

A. It was black ink.

Q. Just ordinary black ink?

A. I reckon it was.

Q. Did you examine it to see?

A. No, sir, I didn't examine it.

Q. Did you know?

A. I just took the stencil and put in it and made the cross—looked just like any other ink.

Q. What kind of a place was it in there at which you marked the ballot—the booth?

A. It was a dressed board.

Q. A board?

A. Dressed white pine board, I think.

Q. You put the ballot right on that board?

A. Yes, sir; it lay right down on that board.

Q. Spread the ballot out on that board and marked it?

A. That is the way I done it.

Q. Necessarily you put or dipped the stencil in the ink and then put the stencil upon the ballot?

A. They had something there to kind of dry their stencil, if they wanted to, if they didn't, they just put it to it anyway.

Q. Put it on the plain board?

A. Yes, sir.

Re-direct examination Gov. Bradley:

Q. How was this ink prepared—was it in a bottle that you reached in and got it?

A. It was in a pad.

Q. Then you put the pad to the—put the stencil to the pad and voted with it?

A. Yes, sir.

Q. You have been asked if you couldn't locate this

stencil mark by reason of knowing where the device was. Could you have known anything about how a man voted had it not been for the thinness of the paper, which allowed the stencil mark to appear through it?

A. Let me see if I understand your question right. I could tell from the shape of the device, after a ballot was voted, I could tell how every man voted.

Q. Could you tell from the device itself or from the marks that appeared through it?

A. I could tell from both.

Re-cross examination by Mr. Phelps:

Q. Didn't you state a minute ago that you couldn't see the emblems but could judge about where they were?

A. I don't think I did.

Q. You didn't say that you had to place the emblem by knowing about where it was?

A. I don't think I was asked that question.

Q. You didn't say anything of that kind?

A. I think I stated awhile ago that I could tell how every man voted from the ink of the stencil that went through the ballot and it doubled twice, but I don't think I was asked the question about whether I could tell it from the device or not.

(Part of the cross-examination of the witness heretofore was read by the stenographer.)

Q. It seem you did say that?

A. Yes, sir. If I had understood the question I could have answered it just the same as I did the last time.

By Gov. Bradley: What is the politics of the county clerk of your county?

A. He is a Democrat.

By Gov. Bradley: He furnished the stencils and everything?

A. Yes, sir.

George W. Halsey, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live in Campton.

Q. Where were you on the day of the election, last November?

A. I was at Campton there.

Q. Were you an officer of the election?

A. No, sir.

Q. Did you on that day notice the texture of the ballots that were being voted?

A. None but the one I voted myself. I had no chance. I was no officer of the election. I didn't see any ballots.

Q. What about the one you voted yourself?

A. I could see how I voted after I had voted.

Q. What do you mean by saying you could see how you voted?

A. Well, just to make it short I will tell you exactly. I am a Republican. I had a Democratic kinsman for a minor office running in that county there on the day of the election and I felt that I ought to vote for him. He was a kinsman. I made my mark under the cabin. I went down and crossed and voted for my kinsman, and after I folded my ballot, I didn't care about everybody knowing I had crossed, because I never made a habit of doing anything like that very much, and held the ballot up to see if the boys could see I had made a scratch there, and I could see that I had made a stencil mark down here.

Q. Anybody else see it but you?

A. No, I don't reckon they did. I took it out and laid it down.

Q. What position did you hold it in when you did that?

A. I doubled it sort of in this position, about that way, and I held it up. I had marked—

Q. How did you do when you looked at it?

A. After I folded it over that way, I could see there was a mark down here and one at the top.

Q. You could see it from the outside of the ballot?

A. Yes, sir; after I had turned it over once that way.

Q. You still voted the ballot?

A. Yes, sir; I took it up and laid it down.

Cross-examination by Mr. Phelps:

Q. You say after you had voted in the manner you have described, you held the ballot to see if you could see it or not?

A. I was in the booth. After I laid it down and made my mark and I picked my ballot up in this kind of position this way (indicating) I could see that there was a mark up here and one down at the bottom. There were two marks on the ballot.

Q. You could see there were two marks on your ballot?

A. Yes, sir.

Q. But you could see the various emblems on the ballot?

A. I didn't notice about that.

Q. So that a person just seeing the two marks on the ballot, unless he knew under what emblem they had been put, wouldn't know how they were voted for?

A. I couldn't tell about that for I never thought about that at this time. I heard nothing said about the ballots being thin. I just noticed and sort of laughed to myself and said to myself, "The boys will say that Halsey scratched this time a little." He was a kinsman, a cousin to me, Joe P. Rose, a member of the legislature, cousin to me. He is the man I voted for.

Q. Don't you think possibly it was your conscience that made you think you saw that instead of your eyes?

A. No, sir; I know I did.

Q. Didn't you feel you had committed a sort of sin and your conscience kind of hurt you?

A. No, sir; I voted for a good man when I voted for my cousin.

Q. That is just a bit of pleasantry.

W. G. Lacey, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live in Hazelgreen, Wolfe county, Kentucky.

Q. Were you there on the day of the election, November, 1899?

A. Yes, sir.

Q. Were you an officer of the election?

A. No, sir; I was an inspector at the election at that precinct.

Q. You were an inspector?

A. Yes, sir.

Q. Assisted in counting the ballots, did you, or not?

A. Yes, sir.

Q. What was the character of the ballots that were used there as to their texture?

A. They were very thin. They were sufficiently thin that the stencil mark showed through the ballot very distinctly after they had been marked.

Q. How many of them were there that way?

A. Well, sir, I think I noticed about thirty or forty, I don't know exactly how many, quite a number.

Q. Did you notice all of them particularly, or just accidentally see so many?

A. Well, sir, when I went in and voted, I noticed that the stencil mark showed through my ballot very distinctly and after that I gave notice to a great many others, and every one that I noticed the stencil mark showed through sufficient to tell on what part of the ballot it was placed.

Q. What was the emblem at the top, first column of the ballot?

A. The rooster, Democratic emblem.

Q. What was the second?

A. The second was the Brown emblem.

Q. What was the third?

A. The third was the log cabin.

Q. Could you or not tell from the outside of the ballot the relative position of these three designs or emblems?

A. Yes, sir; very easily.

Cross-examination by Mr. Phelps:

Q. What number in order did the Prohibition emblem get?

A. I couldn't tell exactly, but I think it was fourth.

Q. As to what emblem the stencil came under you had to count or estimate that?

A. No, sir.

Q. You couldn't see that?

A. You could tell whether it was near the left hand side or near the middle, you could tell sufficiently close to distinguish under which emblem it was.

Q. In order to do that you would have to estimate where it was, you couldn't see the emblem?

A. No, sir; I don't think I saw the emblem.

Q. What you think was in some cases that the stencil mark showed through, and you would guess from the location of it about under what emblem it was?

A. Well, you could tell under what emblem it was pretty correctly without guessing at it.

Q. By estimating?

A. Yes, sir.

Q. And not by sight?

A. I couldn't see the emblem; I don't think I saw it.

Q. In the cases where you saw the stencil mark, you would, according to your judgment, guess under which emblem it was?

A. Yes, sir.

Q. So that the trouble in the cases that you noticed was that the stencil mark could be seen on some of them?

A. Could be seen on all that I gave attention to.

Q. But on none of them could the printed matter, the emblem be seen through the paper?

A. I don't think I saw it, I don't know whether that could or not. They might by examining it closely.

Q. Had all of them, you didnt' see it?

A. I don't think I did.

Q. You did see the stencil mark?

A. Yes, sir.

Q. In order to tell how a man voted you had to use your guess or judgment about under which emblem it was?

A. I could tell. There wasn't very much guess about which emblem it was under because I knew the position.

Q. I only asked you if you didn't have to use a guess or a judgment about it?

A. Couldn't tell through that, I guess, but you could tell the position of the mark under which emblem it was.

Q. What I wanted to get at, you couldn't see under which emblem it was, but you had to use your judgment from the location about under what emblem it was?

A. Yes, sir.

Q. Isn't that true?

A. Yes, sir.

H. A. Coulter, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live in Mayfield, Graves county.

Q. Have you with you the stubs of the ballots voted at the election of 1899?

A. I have a couple with me. The rest are here in town.

Q. How many of them are there in all?

A. There are twenty-seven voting precincts.

Q. Will you file all of those stubs before this commission?

A. Yes, sir; I can do that. I haven't got but twenty-five stubs. There is twenty-seven voting precincts.

Q. But you didn't have any of the votes?

A. No, sir; the officers of election destroyed the ballots and returned the certificates.

Q. Burned the stubs up, too?

A. Burned the whole shooting match?

Q. Why was that?

A. I don't know.

Q. Do you remember those precincts?

A. No, sir; I don't remember them.

Q. You have got twenty-five?

A. Yes, sir; and two certificates.

Q. You can tell what precincts they were?

A. I think it was Lowes' Cross Roads and Wingo.

Q. Do you remember what the vote was in those two precincts?

A. I have the certificates.

Q. What was it?

A. I don't remember. I could file the certificates.

Q. Where are your certificates—let's see them—which one is that?

A. The one is Wingo and the other is Lowes' Cross Roads.

Q. How did Wingo vote?

A. Wingo voted Goebel 233 and Taylor 131.

Q. How did it vote in the Lieutenant-Governor's race?

A. Beckham 221, Marshall 121.

Q. How many votes did Taylor get there?

A. 131.

Q. How did the Cross Roads go?

A. Goebel 78 and Taylor 75.

Q. How in the other race?

A. Beckham 68 and Marshall 66.

Q. Have you any of the ballots with you?

A. No, sir.

Q. Were any of the ballots returned to your office?

A. I don't know whether they were or not.

Q. As contested ballots?

A. I don't remember whether they were or not. All I have is just what the commissioners turned over to me.

Q. You have no ballot at this time, and never had as I understand you?

A. Not that I know of.

Cross-examined by Mr. Kohn:

Q. I understand you filed one of the books, one of the stub-books?

A. Yes, sir.

By Gov Bradley: He files all twenty-five of them.

(It is agreed that one may be filed and that the ballots are the same in all.)

Q. I will ask you to state whether or not these ballots and the stubs are printed from what is known as eighty pound paper?

A. Yes, sir.

Q. And glazed paper, is it not?

A. Yes, sir.

Q. I will ask you to state whether or not that paper is sufficiently thick for ballots?

A. Yes, sir. That is what I thought. I examined it before I—

Q. Did you test it?

A. Yes, sir.

Q. I will ask you to state whether or not it is possible to see how a man voted when he voted a ballot properly on those ballots?

A. I didn't think he could, that was my judgment.

Q. All those ballots you say were destroyed?

A. Yes, sir; so far as I know.

Q. None returned to you either as questioned or rejected?

A. I have none in my office, if they have been returned I don't know anything about it.

Q. There has been a ballot presented here, I don't know where it came from. I will ask you to look at that and state whether or not that is one of your ballots, and if so, what caused its condition to be as it now is?

A. That may be one of those ballots, but I don't think it is.

Q. Do you know where that came from then?

A. No, sir; I do not.

Q. Look at that signature, there is the name of H. A. Coulter?

A. That favors my signature right smart, but it don't seem to be just exactly correct. It looks like somebody has tried to copy my handwriting very much.

Q. But those stubs show the quality of the paper, do they not?

A. Yes, sir. I wouldn't swear positively. That is not one of my ballots, but it don't look like it.

Q. That has been considerably worn, that ballot?

A. Yes, sir.

Q. Did you have any worn ballots around there that you gave out?

A. No, sir; if anybody has got one in any shape, form or fashion it was without my knowledge or consent, I never had one.

Q. The kind of ballots that were used in your county and that you gave out were good, perfect ballots?

A. Perfect.

Q. And were eighty-pound paper, and through which the device—

Objected to.

Q. I will ask you to state whether or not—I will put it in a form that the gentleman can't object to it. Those ballots were ballots through which you could see how a person voted or not?

A. No, sir; I don't think he could, and when I voted myself, I was clerk and I was interested in the matter to have a fair election, and I examined the one that I voted and I couldn't see.

Redirect examination by Gov. Bradley:

Q. You say that is eighty-pound paper?

A. That is what the printer informed me, and that is the kind I was instructed to get.

Q. You didn't know anything about that yourself?

A. No, sir; only what the printer told me.

Q. You don't think that is one of your ballots?

A. I don't think it is, it may be that it has been worn so much, and the signature torn in two.

Q. How did you happen to ask that man whether it was eighty-pound paper?

A. Because when I went to get the ballots and instructed him, I said I wanted heavy paper.

Q. You told him you wanted heavy paper?

A. Heavy, thick paper, and I asked him what kind he had, and he said he had eighty-pound paper, and weighed eighty pounds. I don't know what he meant by eighty pounds.

Q. You don't know whether he told you the truth, or not?

A. No, sir.

Q. He was very anxious to print the ballots?

A. He is a clever, honest man, I think he told the truth.

Q. You say there is something wrong about your name?

A. Yes, sir; I don't think, of course, I can't tell, this torn in two.

Q. What is wrong about it?

A. I don't make that kind of an "o"—I wouldn't say—it is very much like my signature.

Q. Did you ever see that ballot before?

A. I couldn't swear it was my—one of my ballots.

Q. You didn't see every ballot you had?

A. No, sir.

Q. You dont' remember whether you ever saw that one before? Did you sign the name on the back of the ballot

or have a fac simile signature placed on the back of them?

A. Fac simile.

Q. Have you ever seen that ballot before to-day?

A. No, sir; not that I know of.

Q. Did you see it before I gave it to you?

A. No, sir; unless I saw it before it was torn out of the book.

Q. You never saw that ballot until you took it in your hands awhile ago?

A. No, sir.

By Col. Breckinridge:

Q. Have you the stamp by which all of your ballots were stamped?

A. I think it is at home; I have it.

Q. Have you it with you?

A. No, sir.

Q. Is this written or stamped?

A. I don't know how the printer got it; I fixed a signature for him.

By Gov. Bradley:

Q. What relation are you to the Hon. Gus Coulter, who was the Democratic candidate for auditor, and who is now contesting for the office of auditor?

A. Brother.

Re-cross examination by Mr. Kohn:

Q. Who printed the ballots?

A. Mr. E. S. Beaumont.

Albert S. Brandeis, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live in the city of Louisville.

Q. Have you or not, recently gone over the registration books, and election books of the city of Louisville, for the purpose of seeing what portion of the registered vote was actually cast in the November election, 1899?

A. In part I have.

Q. How many precincts?

A. Personally I examined four wards; I should think about 60 precincts.

Q. Anybody associated with you in this examination?

A. Yes, sir.

Q. Who were they?

A. W. B. Dickson, Alex. Barrett, Lafont Allen.

Q. How many did Dickson examine?

A. I think examined one ward.

Q. How many precincts?

A. I don't know; he examined one ward.

Q. A gentleman by the name of Barrett, how many did he examine?

A. Two wards.

Q. How many precincts?

A. I can't say.

Q. Anyone else?

A. Lafont Allen.

Q. How many did he examine?

A. I think he examined five wards.

Q. How many precincts?

A. I don't know.

Q. How many precincts in all were examined by you gentlemen?

A. All the precincts of the city of Louisville except ten.

Q. Where were those ten situated?

A. Scattered over the city, not more than two in any one ward.

Q. Can you give us the ten?

A. I don't think I can, the numbers, except the ones that were missing in the wards I personally examined.

Q. How many were missing in your wards?

A. In the wards I personally examined there were two missing.

Q. What were they?

A. The 40th of the first ward; and the 38th of the 12th ward.

Q. Were they missing from the office, do I understand you?

A. They were missing from the place of custody.

Q. That is the County Clerk's office?

A. No, it is not; the place of custody was the vault of the Louisville Trust Co.

Q. After having made that examination, you gentlemen, did you or not, add up the result in those precincts you examined?

A. I will state what I did. I personally got the numbers of names registered as Democrats in each precinct, and the number of those who had voted at the election;

and also with reference to the Republicans who were registered, and of those of them who had voted at the election.

Q. Did you add that in these precincts you have been talking about, or any of them?

A. I did that only in the four wards which I personally examined.

Q. Did you or not, add the result obtained by these other gentlemen, and the result obtained by you altogether?

A. I did.

Q. Well, those other gentlemen are here are they?

A. Yes, sir.

Q. I will get you to state what that general result was, first give us the numbers of Democrat votes in these precincts and the number of Democrat votes cast in these precincts?

A. I can not say what the number of votes were cast as Democratic. That was not the purpose of my examination. I can say what the number of voters in each precinct examined by me who were registered as Democrats; and I can add the number of those who voted. I do not know whether they voted the Democratic ticket, or any other ticket.

Q. Now, how many of these voters were registered as Democrats?

A. The total number of persons registered as Democrats in all precincts, except the ten for which the books were missing was, 20,610; of these 17,146 voted at that election. In the same books not including the ten that were lost, there were registered 12,501 persons as Republicans; of that number 10,019 voted.

Q. What per cent of the Democrats registered there failed to vote?

A. 16 8-10 per cent.

Q. What per cent of the Republicans failed to vote?

A. 19 8-10 per cent. I wish to add that except as to the first, sixth, eighth and twelfth wards, these figures are taken from the reports by the other gentlemen.

Q. These ten precincts which you did not get, do you know the political complexions of those ten precincts?

A. I do not.

Q. Where was the greatest falling off in the Republican vote, if there was any place where it fell off more than another?

A. In the fifth ward 68 6-10 of the persons registered as Republicans voted. In the 9th ward 69 7-10 of the persons registered voted and no more; in the tenth ward

68 7-10 of the persons registered as Republicans voted and no more.

Q. Those were the points where the Republican vote fell off more largely?

A. I will add that in the eighth ward 77 7-10 of the persons registered as Republicans voted and no more.

Q. Where are those wards?

A. The city is divided into twelve wards—

Q. Were those wards known as the colored wards of the city?

A. The fifth, ninth and tenth are pre-eminently the colored wards in the city, and they are the ones.

Q. What part of the city were they in?

A. The city is divided into twelve wards beginning at the east end of the city and running westwardly; the wards generally extend between parallel lines from the north, that is the river, southwardly. The fifth ward is therefore the fifth in succession, beginning at the east end of the city. It extends from Preston street to First street, between the river and the southern city limits. The ninth ward is west of Seventh street; and the tenth ward immediately west of it both extending from the river front at the north, southwardly to the city limits. I do not know the division line between the ninth and the tenth.

Q. Extend from the river on the north to what point?

A. Southwardly to the city limits.

Q. Do you know what the total registered vote of the city was?

A. I do not know with any exactness.

Q. Do you know what became of these books that are missing?

A. I do not know; I can not say; they were not to be found; I understood that some of the books had not been returned at all.

Q. Do you know where these other ten precincts are located—in what parts of the city?

A. I do not know the number of the precincts nor their boundaries except this far; that is in the first ward, one in the second ward, one in the fourth ward, two in the fifth, one in the seventh, two in the ninth, one in the eleventh, and one in the twelfth.

Q. Do you know anything about how the election was conducted at any point there that day?

A. I have a familiarity with the conduct of the election at one precinct.

Q. What precinct?

A. 14th precinct of the 5th ward.

Q. How was that conducted?

A. That is located on Market street between First and Brook; I was in charge of a number of gentlemen at that ward for the purpose of preserving so far as we could lawfully do so, a fair election. I was also the inspector for the Brown ticket at that ward. Promptly at four o'clock I present myself at the door of the election booth and was excluded and the door was closed in my face. I held up to the gentlemen in there the order of Judge Toney, a copy of which was in my hand as well as my commission as inspector and demanded admittance. I kept on demanding and knocking in the face of some—

Q. Do you know anything in regard to any irregularity outside of the failure to admit you as an inspector?

A. The Republican inspector was also denied admittance.

Q. Who was he?

A. I do not know his name.

Q. How was the vote conducted during the day?

A. Apparently quietly and peacefully.

Q. Rapidly or otherwise?

A. No obstruction; there never was any line formed for, except for the first hour after opening the polls.

Q. No delay in the voting?

A. No, sir; no delay.

Q. Is that all you know about it?

A. During the polling of the vote?

Q. Anything wrong that occurred there?

A. I had my opinion about it.

Q. Tell us what you know about it?

A. I can't say anything further than that.

Q. I will get you sir, to file this paper as a part of your testimony, it being a statement of the different wards.

Said statement was here filed.

Cross-Examination by Mr. Phelps:

Q You are a member of the so-called Honest Election League?

A. I was a member of the Honest Election League.

Q. You were a member of that organization?

A. Yes, sir.

Q. And you had a brother who was a candidate on the Republican ticket?

A. He was, for City Councilman.

Q. And you went to the polls with the Brown inspector certificate?

A. I was Captain of a squad of gentlemen at that precinct during the polling; and I was the accredited Brown inspector at that precinct.

Q. Captain of your squad, were you?

A. I had organized it and I was Captain so far as you could say it had a Captain.

Q. Who was it, made you Captain of that squad?

A. I can't say who made me; I was asked if I would serve in that capacity, and I did.

Q. Who asked you to serve as Captain of that squad?

A. I do not know what member of the Honest Election League it was.

Q. How many was in the squad you were Captain of?

A. Six or seven of us; all gentlemen, and all well known to you.

Q. All gentlemen, I do not question that. You went there, your brother being a candidate on the Republican ticket, and was Captain of that squad, and went there armed with the Brown party credentials as inspector?

A. I went there armed with the credentials of the Brown party, but I do not see any connection between that and my brother being on the Republican ticket for City Councilman.

Q. I did not ask you for the connection; I hope the commission would see the connection. You have no complaint to make about anything that was done until the closing of the polls?

A. Oh, yes, sir.

Q. Who did you complain to?

A. The policemen that were stationed at the polls.

Q. Were you treated all right?

A. No, I was not.

Q. Were you treated right by the police?

A. No, he declined to interfere.

Q. What act occurred that you complained of that was not stopped?

A. The polling place was in a livery stable in a small office in the corner; the owner, or the man who purported then and there to be the owner of the livery stable, was exceedingly active in and around that polling place. I made numerous complaints to the police about it and the police declined to do anything; declined to interfere on the ground that the gentleman had a right to be in his place of business.

Q. You made complaint because the proprietor of the place had gone into his office during the day, and the police declined to interfere with him?

A. No, sir; that was not the reason I made the complaint. He went into the polling place and was standing around—talked to the officers; was within the fifty-foot limit; was interviewing voters—negroes in his stable im-

mediately adjoining the voting place, and in a manner exercising a certain control over the election.

Q. And the police thought this was the man's place of business and they would not keep him out?

A. They said it was the man's place of business, and they did not interfere with his doing.

Q. Mr. Brandis, at the closing of the polls you presented your certificate as Brown inspector?

A. I did, and also the order of injunction.

Q. Did you attend the count?

A. I was denied admittance.

Q. Did you get in?

A. That was at four o'clock, and I stayed there until 7:35, I believe. At that time in responce to calls made upon the police department, the Chief of Police at, and after four o'clock and many repeated demands personally, and over the telephone and in other ways at 7:35 a squad of police arrived and demanded admittance to the polls. It was denied; they rapped again and again, and declared they would force an opening and after a delay of a minute or two they forced an opening and allowed me to go in.

Q. And the courts after that decided you had no right in there?

A. You know the decision of the court as well as I do.

Q. You know it too?

Objected to.

Q. How many votes have you accounted for in this table of yours; how many of the total vote in Louisville do you account for in the table which you present?

A. Do you refer to the four wards I personally examined?

Q. I refer to the whole thing, even taking the information which you have gotten?

A. This is a table of all the voters registered as Democrats excepting the ten precincts in which the books are lost, and shows 20,610 registered as Democrats; and it shows 12,501 registered as Republicans. In making our count from the registration books we omitted the names of all persons who were registered without party affiliation.

Q. My question was, how many of the votes have you accounted for in this table?

A. The addition of 20,610 and 12,501. That is the registration of the vote. Of the votes registered there were 17,146 voted who were registered as Democrats. There were 10,019 who were voted and who were registered as Republicans. Whatever the addition is.

Q. I hand you the official certificate of our County Clerk, you know his signature, as to the registration of that county, and ask you to examine it and say what is the difference between the vote there accounted for and showed by the certificate of the County Clerk as to the registered, and your table?

A. This certificate that you hand me states that 42,042 were registered.

Q. Do you know whether that is genuine or not?

A. I think it is; I don't know.

Q. Will you please file that as a part of your evidence?

A. I do.

Q. How many votes cast do you show by your table? As against the total registered vote as shown by this certificate?

A. Over 6,000 registered without party affiliation, and those we made on account of in our investigation of these books.

Q. I did not ask you that; I asked you of the forty-two thousand and odd certified to by the County Clerk as being registered, does your table show to have voted?

A. My table shows to have voted the sum of 17,146 and 10,019.

Q. 27,165 you show voted. Then you do not account at all to this commission between the 42,000 and odd certified by the County Clerk and 27,000 votes—about 15,000?

A. I do account for the unaffiliated vote which I did not include in this table.

Q. How many was that?

A. That is over 6,000 registered.

Q. That still leaves 9,000. 27,000 as against 42,000 and you say 6,000 were unaffiliated. You do not account for the other 9,000?

A. There were many voters registered in Louisville at the registration as voters who did not vote in the election in November.

Q. How many, do you know?

A. No, I do not know.

Q. But it is true, is it not, that taking that as true the official certificate of the County Clerk has 42,000 and odd, and you only account for a vote of 27,000, a difference of about 15,000?

A. I account for 27,000 voting, persons who registered as Democrats and Republicans.

Q. I say you leave 15,000 votes unaccounted for in the table which you have made out—when did you first make up that table?

A. Between Saturday noon and last Tuesday.

Q. At whose instance did you make it up?

A. I was told that Mr. Lester would like to have that work done.

Q. Who is Mr. Lester?

A. I think he is some state officer, inspector of some kind; I don't know.

Q. Who told you that Mr. Lester wanted it?

A. Mr. James Speed of the Trust Co.

Q. Did he tell you just what he wanted done; what he wanted to get?

A. What data he wanted to get in a general way.

Q. You did not make up any table showing the disposition of any votes voted, except this 27,000, did you?

A. I most assuredly did. I made an examination, I and my associates, and when I speak of this thing I want it to be understood that I did not do it all in person, showing 20,610 Democrats registered; and 12,501 Republicans registered.

Q. You do not understand my question; the question is— or the question I tried to ask you was whether you made up any table,—any other table—accounting for the 15,000 votes which are not accounted for in your table here?

A. There are not 15,000 votes accounted for. Mr. Phelps there are 20,610 names registered, every one of which is registered and accounted for—registered as Democrats; and there are 12,501 Republican registered votes accounted for.

Q. That is the registration?

A. Yes, sir. You have asked me with reference to the 42,042 certified to by Mr. Johnson, and I am trying to answer that question. In addition to that, Mr. Phelps, there were over 6,000, as it was generally known, which were registered without party affiliations. Those voters we did not count at all.

Q. You say it was generally known; who told you that; that there were 6,000 who were registered without party affiliation?

A. It was generally known; published in the newspapers.

Q. You say it was generally known?

A. Yes, sir; I think so.

Q. You say that you took account of those votes so registered; 20,610 registered as Democrats, and 12,501 registered as Republicans, do I have the figures right?

A. Yes, sir.

Q. That makes 12,011?

A. Yes, sir.

Q. And the County Clerk's certificate shows over 42,000 votes registered; then there was about 10,000 that you could not account for?

A. 9,000. They are accounted for, not in the table, but I will add, sir, in the first place about 6,000 or more voters registered without any party affiliation, and are included in Mr. Johnson's figures. In addition to that there are 10 precincts in the city the books for which were lost and we have not accounted for any of these.

Q. Taking the vote cast, you have account for 17,000 and 10,000 approximately?

A. Yes, sir.

Q. How many votes were really cast in our county, do you know?

A. The city alone do you mean?

Q. Yes, sir.

A. I can not state that with any degree of exactness; I think about 33,000 votes; I do not know.

Q. That leaves something over 6,000 that are not accounted for in your table?

A. Something under 6,000 votes.

Q. You do not account for these in your table?

A. I do not, excepting the way I told you.

Q. Can you give to the Board, have you any reference or table to give the Boards the votes received by the Taylor ticket, or Mr. Taylor alone, and the number received by Mr. Goebel?

A. I have with me a copy of the Courier-Journal Almanac that shows it. I do not know it in any other way.

Q. Can you approximate it about the figures?

A. It would show every precinct separately.

Q. Is it not about 18,000 and 13,000?

A. I understand that the official returns show, after a number of precincts were rejected by the canvassing Board, that Mr. Taylor had about 3,400 plurality. That included the County of Jefferson.

Q. Can you tell us the number of his votes—was it not about 18,000?

A. I think it was about 18,000.

Q. And then the other would be 14,000 or 15,000 votes?

A. I think so: and the Brown ticket had about 2,700 I think, or thereabouts.

Q. Will you give us the names of those persons—your squad, of which you were Captain?

A. There was Walter P. Lincoln, William Jarvis, Dr. Robbins, James Short, I think his name is; Albert Brandeis.

Q. Capt. Albert Brandeis?

A. No, sir, he was a private; that was my kinsman.

Q. He was a private?

A. Yes, sir; I don't now recall any others.

Q. Were there various squads organized and designated to the other various precincts?

A. I don't know anything about the others—any others.

Q. Did they have any other similar squads in other parts of the city?

A. I don't know of my own knowledge.

Q. Do you know of any other precincts where they had squads, except yours?

A. I think so; I think they did.

Q. Who was the Colonel or the General, who organized these squads?

A. I never heard of any higher officer than Captain.

Q. There must have been some head to it?

A. Nobody over me; I don't know anything about that.

Q. Do you know about the headquarters that they had in various parts of the city, for your League?

A. No, I do not.

Q. Know of any of them?

A. I do know there was a headquarters at Fifth and Main.

Q. Know of any other sub-headquarters?

A. No, sir, I never did.

Re-examination by Col. Breckinridge.

Q. I hold in my hand, Mr. Brandeis, the Courier-Journal Almanac for that year, which professes to give the official vote, by precincts; are you familiar with that?

A. I have seen it.

Q. I see in that five precincts rejected which are not returned. Do you know whether these five precincts are included in your list which you have given?

A. I do not. I can look and see.

Q. It is the 7th precinct of the First ward.

A. The registration books for that precinct were examined by me.

Q. You have for that precinct examined as to the vote?

A. The registration of the voters, and who voted.

Q. The 13th precinct of the 5th ward?

A. I did not examine the 5th ward, sir.

Q. The totals given in this, of the city vote are 13,415 for Mr. Goebel, 16,554 for Mr. Taylor, and 2,267 for Gov.

Brown, and 276 for all the balance. In the report which you make, if I understand it, you omitted the ten precincts, of which the registration lists are missing?

A. Necessarily so.

Q. You omitted 6,000 and odd voters who gave no party affiliation?

A. Yes, sir.

Q. The question I was asking was—the returns that you make were made upon the registration lists, omitting the ten precincts that were missing, and the 6,000 and odd persons who were registered without giving party affiliations?

A. That is true.

Q. It included all other precincts whether rejected or not by the Election Commissioners?

A. Oh, yes.

Q. (By Gov. Bradley): When you were allowed to enter this polling place what was the condition of the ballots?

A. The ballots were not there.

Q. Where were they?

A. In the interval between the first rapping by the police and the breaking into the door, which may have been a minute and a half, or two minutes, or thereabouts, a number of persons who were in the election booth departed. When I entered the polls I demanded the right to inspect the count and we were told by one of the election officers that the ballots were gone; and never have been seen since; I never saw them.

Q. What precinct was that?

A. 14th precinct of the 5th ward.

Q. Those persons that departed while you were entering the polls—

A. There was a good deal of scuffling around the room while we were waiting, and some persons who had been there went out and came mack afterwards.

Q. You did this work at the instance of Mr. Speed. I will ask you if Mr. Speed did not tell you that I had sent Mr. Lester down there to secure this information.

A. Yes, sir; he told me that. He as custodian had an order from the County Clerk to Mr. Lester to examine the books; and it was only after that was presented that I consented to engage in the work.

Q. (By Col. Breckinridge): What precinct did you say it was?

A. 14th precinct of the 5th ward.

Q. In that precinct Mr. Goebel got 140, ex-Gov. Brown one, and Mr. Taylor 22. Those ballots you say had not been found?

A. I don't know anything about the ballots; I said they had been gone. They were never burned outside the booth, nor destroyed in the public, or any portion of them.

Re-cross-examination by Mr. Phelps:

Q. Did you ever hear of any being burned, or destroyed in the presence of the public?

A. I have always seen that done.

Q. Where did you ever see that done; where were they burned in the presence of the public?

A. At a precinct in the 7th ward—my own home precinct where I have voted, and where I have on previous occasions acted as inspector.

Q. Who was the officer that told you that the ballots were gone?

A. I can't say.

Q. Can you tell any officer that said that?

A. There were four officers at that election precinct, and two other men, Sam Simons and John Berry, whom you know to be supporters of Mr. Goebel in this last election. They were both there during the count in that election booth—by what right I do not know. They were not officers.

Q. Had the count been completed when you went in there?

A. It was declared to have been completed.

Q. When it is completed it is the duty of the officers to destroy the ballots?

A. When the count is completed it is the duty of the officers to announce the result in front of the booth and then to burn the ballots publicly or otherwise destroy them.

Q. You then as a lawyer state that it is the law, that after it is done they shall announce it at the door, and then destroy the ballots publicly?

A. I did not say that it is the law; I say it is the duty of the officers to publicly announce the result and to destroy the ballots.

Q. You did not say that?

A. If I did say that I said it in the confusion of your interruption. I do say now it is the law that the result shall be announced. There can be no dispute between us as to what I said.

(At this point Mr. Phelps requested the stenographer to read the statement of the witness on this subject contained in the third answer above, which was done.)

Q. You see you did say that?

A. There has been no dispute between you and me as to what I have said. If I said it was the law that the officers shall destroy the ballots publicly, then I did not intend to say that. I do not think I said that at all.

Q. We won't dispute about it. You are speaking about the duty of the officers to burn them in the presence of the public; can you find anything in the law on that subject which says that they shall be burned or destroyed in the presence of the public?

A. I did not say that; or if I said it I did not mean to say it.

Q. You observe yourself that you did say it?

A. I will say this, it is the duty of the officer, as you know, to announce the result publicly; and the law also requires that the ballots shall be destroyed. I say to you that these ballots if they were destroyed, were destroyed secretly and not in the presence of the public.

Q. I was trying to get from you an admission that there is nothing in the law that requires that they shall be destroyed publicly?

A. I say to you that I do not know now whether there is anything in the law that requires them to do it publicly.

Q. Although you were Captain of that Honest Election League——

A. I believe it is the law, but I do not know whether it is or not.

Q. Will you give us the names of those four officers at that precinct?

A. No, sir; I do not remember their names.

Q. I believe you stated that you had several gentlemen who assisted you in that work, and you named the others, and gave the wards which you examined yourself, will you give us those wards?

A. Do you now refer to the count of the registration or of the votes?

Q. I refer to both.

A. I say I personally counted in four wards—the First, Sixth, Eighth, and Twelfth.

Q. And the other gentlemen reported that they had counted in the others, and you took their figures?

A. That is true.

Q. Can you give me the names of the four election officers at your precinct?

A. No, sir.

Q. Can you give me the names of any of them?

A. No, sir.

Q. Can you give me the party affiliations of any of them?

A. I can not give their names; and, therefore, I can not single out and give their party affiliation.

Re-examination by Gov. Bradley.

Q. Did they declare before you went in there what the result was?

A. No, sir; so far as I know the result was not declared publicly.

Re-cross-examination by Mr. Kohn.

Q. Was not you gone away a part of the time; did not you after four o'clock?

A. I was at the door from four o'clock until 7:45.

Q. You stayed there all the time?

A. Yes, sir.

T. Tanner, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. Frankfort.

Q. What is your business?

A. Printer.

Q. How long have you been engaged in that business?

A. Since 1844.

Q. Have you ever had any experience; the weight of paper?

A. I have handled paper all my life; I am a pressman.

Q. I will get you to look at this paper in the stub books from Graves County and tell those gentlemen what is the weight of that paper?

A. Depends on the size of the paper. That is about a 60-pound paper in a 26x40. Of course I don't know the size.

Q. What sort of paper do you call that in printers' parlance--60-pound paper?

A. Yes, 60-pound paper.

Cross-examination by Mr. Kohn.

Q. Where is your place of business?

A. The round-about office.

Q. In this city?

A. Yes, sir.

Q. Who is the proprietor?

A. Geo. A. Lewis.

Q. What are his party affiliations—republican or democrat?

A. Republican.

Q. A newspaper office, is it?

A. Yes, sir.

Q. Who brought you that stub book to examine it in the first place? Did Mr. Lewis take it to you and ask you to examine it?

A. Mr. Lewis showed me the stub book.

Q. You think that is 60-pound paper?

A. Yes, sir.

Q. That depends a good deal upon the width of the paper?

A. Upon the size?

Q. Do you know what the size of that was?

A. I say it is about equal to 26x40 60-pound paper.

Re-examination by Gov. Bradley.

Q. I believe you said you worked for Mr. Lewis, who you said was a republican?

A. Yes, sir.

Q. Will you tell these gentlemen what your politics are?

A. Democrat.

Q. What sort of a democrat are you?

A. Straight democrat.

Q. A Goebel democrat?

A. I voted for Goebel.

Geo. A. Lewis, a witness called for contestee and examined by Gov. Bradley, deposed as follows:

Q. Who called your attention to this stub book to-day if any one?

A. You handed it to me, sir, since I came into the room.

Q. At whose instance did you show that stub book to Mr. Tanner?

A. At yours.

Q. How long have you been in the printing business?

A. For myself 22 years; for others since 1864.

Q. Been a practical printer since 1864?

A. Yes, sir, I commenced business in Lexington.

Q. Have you or not during that time purchased paper?

A. Yes, sir.

Q. Do you know anything about paper?

A. Some little from looking at it as to what kind of paper it is.

Q. You can form an idea by feeling of it of the weight of paper?

A. Yes, sir.

Q. I believe you are a republican?

A. I am, sir.

Q. Have you examined that paper?

A. Yes, sir.

Q. What do you call that paper, what of paper is it?

A. That looks and feels to me like No. 1 supra calendar book paper, 26x40, about 60-pound weight.

Q. Is that what is called by the printers 60-pound paper?

A. I don't think if it was eighty-pound paper it was a very large size; it may have been 30x44 and been an eighty-pound paper.

Q. What is the difference in texture between an eighty-pound paper and a sixty-pound paper?

A. No difference in the texture; the only difference is in the thickness.

Q. Which would be thicker?

A. The eighty-pound paper of course.

Cross-examination by Mr. Scott.

Q. I believe you are a republican?

A. I am, sir.

Q. Have taken a right active interest in this contest?

A. I have from the newspapers.

Q. I will ask you whether you did not take that stub book out into the ante-room and show it to Mr. Tanner, and ask him to examine it?

A. I did, sir.

Q. Sixty-pound paper means sixty pounds to the ream?

A. Yes, sir.

Q. Of one hundred sheets?

A. No, sir.

Q. How many?

A. 480, sometimes 500. A ream of paper is 480 sheets originally, but it is now put up in 500 sheets.

Q. Ordinarily how many sheets?

A. 480.

Q. That is a matter of opinion as to how much any particular paper weighs?

A. I can form my opinion from feeling of the paper.

Q. Can you state by feeling the paper without regard to the size?

A. I can not. I can tell by feeling how it would compare with a sixty-pound paper of the same size.

Q. You have had some experience in making ballots I suppose. That ballot was the same size of the cover there. What would be the size of that ballot?

A. I should think that paper 26x40 would cut into four sheets for that ballot; it looks like it would cut into four to the sheet. There might be some waste on it.

Q. It is only an opinion as to whether that was sixty or eighty pound paper?

A. I do not know certainly, but I say I form my opinion by feeling of the paper.

Q. (By a member): 26x40, is it not a standard size?

A. Yes, sir.

Q. 24x36 is also a standard size?

A. Yes, sir.

Q. Mr. Lewis, does it ever occur in the printing—that a job comes in sometimes and you have not the 26x40 paper and you have to cut another size for it in order to get the job out?

A. Yes, sir.

Q. And that makes more waste?

A. Yes, sir.

Q. The real point that I wanted to get at is, what would be the difference in your opinion in the weight of a paper 24x36 and 26x40 of the same weight paper? Suppose you had a paper 24x36 inches in 60-pound paper, would not a 26x40 paper of the same thickness weigh about 80 pounds?

A. The difference would be about 15 pounds.

Q. 26x40 is, as I understand it, the paper used for a 25-column newspaper—eight pages?

A. No, sir, hardly that large. 26x40 would be a five-column quarto.

Q. There is still a larger size?

A. Yes, sir, 30x44.

Q. Super calendar paper, one may order a super calendar paper if they desire weighing eighty pounds of any size?

A. Yes, sir.

Q. (Gov. Bradley resumes.) Taking the size of that stub book there, what would be if anything, the waste in the use of 28x42 paper?

A. Be about 2 inches each way.

Q. How much would that amount to in the ream?

A. Amount to four or five pounds I guess.

Q. Then if printed out of that character of paper you would say there would be that much loss?

A. Yes, sir.
Q. Now, if printed out of 26x40?
A. That would cut into about four sheets?
Q. Then there would be no waste?
A. Very little if any.

W. B. Dixon, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you reside, Mr. Dixon?
A. I reside in the city of Louisville.
Q What relation are you to John Young Brown?
A. I am a brother-in-law.
Q. Are you or not, one of the gentlemen, who, in company with Mr. Brandeis and others, prepared this statement concerning the vote—the registered vote, and the actual vote cast in the city of Louisville at the last election?
A. Yes, sir.
Q. What part of the city did you look after?
A. I examined the third ward, and I assisted in the examination of the 29th precinct of the tenth ward, the 1st precinct of the tenth ward, the 3rd precinct of the tenth ward, the 14th precinct of the ninth ward—I assisted Mr. Lafon Allen in those four precincts. In the first ward I assisted Mr. Brandeis in the 3rd precinct, and in the 26th precinct of the twelfth ward.
Q. Well, was or not, the work which you did there, correct?
A. Yes, sir; it was.
Q. Was that work included in the general result footed up by Mr. Brandeis?
A. Yes, sir.
Q. I will get you to state whether that general result as reported there by the various gentlemen who engaged in that count, was correct?
A. So far as I know, it was correct.
Q. Your part of it was correct?
A. My part of it was correct.

Cross-examined by Mr. Thum:

Q. I understand, you simply looked into the precincts you have named—examined the precincts you have named and took the vote—first, the registered vote, Democratic, then the registered vote, Republican; is that correct, in those precincts?

A. Yes, I first took the registered vote Democratic, then the registered vote Republican. Then examined and added up how many of the registered Democrats voted, and how many of the registered Republicans voted.

Q. And you did that in how many precincts?

A. I did that in the whole of the third ward and in these other precincts that I have mentioned, in the ninth, tenth and twelfth wards.

Q. And you, of course, know as to the correctness of the precincts that you examined, that is all. Now, as a matter of fact, according to the figures, your general figures, as reported to you there were over 12,000—about 12,00 registered Republican votes?

A. I think so. The table that Mr. Brandeis filed here will show.

Q. And there were over 18,000 cast for the Republican candidate?

A. Yes, sir; I think so.

Q. There were, in fact, over 20,000 Democratic votes, as you have stated, and about 13,000 votes cast for the Democratic candidate?

A. I don't remember the vote as cast.

Q. Who got you to make this examination, Mr. Dixon?

A. Mr. Speed, of the Trust Company.

Q. Well, who was he acting for?

A. He was acting, he said, for Mr. Lester.

Q. That is the state examiner?

A. Yes, sir.

Q. When was the employment made to have the examination, or the contract made to have it done?

A. There was no contract, and no employment, so far as I am concerned; it was simply a request.

Q. A gratis job?

A. A gratis job.

Re-direct examination by Gov. Bradley:

Q. I will get you to say, sir, whether that is your count that you made?

A. It is, sir, and that is correct.

Q. I will get you to mark that, sir, and let us file it?

A. It is marked with my name on the back of it.

Q. Are you pretty well acquainted in Louisville?

A. Yes, sir; I have lived there about fourteen years; I think I am tolerably well acquainted.

Q. Were there many or few Democrats in Louisville who were for Taylor?

A. There were a great many Democrats there who were for Taylor, whom I personally know.

Q. Were you in charge of any precinct that day, or with others in charge of a precinct?

A. I was a member of the Honest Election League, and as such member I was assigned to a precinct on Floyd Street—12th precinct, I think it was, of the 5th ward.

Q. Were you in company with Mr. Brandeis that day?

A. No, sir; I was not, I was at a different precinct.

Q. How was that ward conducted?

A. So far as that particular precinct is concerned, I saw nothing in the way of obstruction there; but I soon switched over across the street to the 16th precinct of the same ward—16th precinct of the 5th ward.

Objected to; overruled.

Q. Well, now, what occured in the 16th precinct of the 5th ward? I mean, as to any irregularities. Was the election fair and equal in every respect, or were there any irregularities or improper conduct; if so, state it?

A. Well, in that precinct—in the first place the polls were delayed in opening; after they got the polls opened—

Q. When was it opened?

A. It was opened probably an hour, I should say, after seven o'clock; I don't know the exact time. After the precinct was opened there was a long line of negro voters there, and another line of white voters not so long. I first noticed a number of negro voters who went in to vote and came out and said that they had not been allowed to vote.

Counsel for contestant objects to what they said.

Q. Well, did you make any investigation to find out whether they had been allowed to vote?

A. Of course, I could not make any investigation except by what they told me at the time. Later in the evening though I went into the voting place with one of those negroes, who said he had been refused the right to vote. I went to see whether or not there was any valid objection to his voting. I first went with him to the house that he pointed out as his house, and then went with him into the precinct. He was sworn and I was sworn, and he testified that he had lived in that precinct, my recollection is, about twenty years, but I am not certain as to the time, but I know it was a sufficient time to entitle him to vote—over a year. The objection to his voting was made on the ground that he was registered as living on Pearl Street, when in fact it was Linden Street or Linden Square. The officers of election had a note from Judge Gregory, stating in substance—

Q. (By Mr. Phelps.) He is the county judge?

A. Yes, sir; stating in substance that it did not matter

whether the street was properly given or not, in the registration book; that if the man lived in the precinct, no matter whether the street was erroneously named on the registration book or not, he was entitled to vote. During the discussion over this negro's vote, one of the election officers stated, my recollection is, that he got his instructions from the Board of Safety, and they didn't say that. After discussing the matter for some time with the election officers, I finally asked them to decide whether the man had a right to vote or not; and this Democratic judge voted that he could not vote. The Republican judge, who was a negro voted that he could vote. The Republican sheriff also decided that he could vote. Then I demanded that the clerk issue him a ballot. The clerk, however, did not issue him a ballot, and then I made the negro demand that he issue him a ballot, and he did demand it, and the clerk still declined to issue the ballot, and they refused to allow him to vote. Afterwards I investigated the registration book of that precinct to find out how many negroes were registered there, and how many voted, and I found that 164 negroes were registered in that precinct, and 44 voted —120 didn't vote according to the registration book.

Q. (Gov. Bradley resumes): Anything else, sir, that you know about the conduct of that election; were the inspectors admitted there—the republican inspector, was he admitted?

A. Yes, sir, he was admitted. It was a perfectly fair count.

Q. Do you recollect what the count of that precinct was?

A. The count stood 55 for Goebel and 54 for Taylor. I was present at the count, as an inspector.

Q. And how many were registered from that precinct?

A. There were 101 white men registered, was my recollection, and 164 negroes.

Re-cross-examined by Mr. Kohn.

Q. That is 264?

A. Yes, sir.

Q. You say you were inspector at that precinct?

A. Yes, sir.

Q. For what party?

A. Brown party.

Q. You were also a member of the Honest Election League?

A. Yes, sir.

Q. Who was it that assigned you to duty at that precinct?

A. Why, my recollection is, that I received a letter signed by the Honest Election League, possibly the Executive Committee, I am not certain about that, asking me to take charge of a precinct.

Q. You took charge of that precinct then in behalf of the Honest Election League?

A. I did in the daytime, during the election.

Q. Then you were to act as inspector for Brown at night?

A. I did.

Q. Who was the Honest Election League working for, Brown or Taylor?

A. The Honest Election League was working for a fair election.

Q. Well, they directed you to go there, in the interest of Brown, or in the interest of Taylor?

A. Neither.

Q. In whose interest did you go there?

A. I went there in my own interest, as a citizen.

Q. Simply as a citizen?

A. I did.

Q. You were for Brown?

A. I was. I will say, however, that I voted for Taylor. I did that because I saw the way the election was going in that precinct, and I wanted to make my vote count.

Q. I didn't ask you how you voted; I simply asked you how you registered.

A. You asked me who I was for, and I proposed to tell you.

Q. Did you register as a republican or democrat?

A. I was not registered; I vote in the county.

Q. You have said that a good many democrats were against Mr. Goebel; isn't it also true that a great many republicans were for Mr. Goebel, especially among the Germans?

A. Not to my knowledge.

Q. Do you know Mr. Phillip Hollenbach, of Louisville, the president of the German Turners Association?

A. Only by reputation.

Q. Do you know the members of that association?

A. I do not.

Q. Do you know the Layers?

A. Only by reputation.

Q. Don't you know that they were very active for Mr. Goebel, and a great many Germans in the city who were republicans, who voted the republican ticket all their lives, were then for Goebel?

A. No, I don't know that.

Q. Isn't it a fact that Mr. Hollenbach took Mr. Goebel, in person, through the city, and was actively at work for him?

A. Not to my knowledge.

Q. Now, the Honest Election League had headquarters—its principal headquarters was at Fifth and Main, was it not?

A. I think so—yes.

Q. They also had in every ward in the city a branch office, did they not?

A. I have seen upon Broadway a sign "Honest Election League Headquarters," but that is the only one I remember to have seen in the city.

Q. Who was in charge of that?

A. I don't know; I was never in there.

Q. You don't know then about the other branch offices in the city of Louisville of the Honest Election League, do you?

A. No, sir.

Q. Then you don't know who was in charge of them?

A. I do not.

Q. Who had charge of that matter of establishing—designating the places where the Honest Election League was to have its offices in the interest of a fair election?

A. I presume the Executive Committee.

Q. Do you know who was chairman of that committee?

A. I don't remember now. I did know.

Q. Do you remember any of the members of that Executive Committee?

A. No, I don't know that I could say positively who a single member of that committee is, or was.

Q. I understood you to say that you got from the Honest Election League the direction to go to this precinct?

A. Yes.

Q. From whom did you get your credentials to act as a Brown inspector?

A. Why, I think some of the members of the Honest Election League who were there gave them to me.

Q. So the Honest Election League was furnishing the credentials to the Brown inspectors, and yet they were non-partisan entirely?

A. Well, I don't know that the Honest Election League gave these credentials to the members of that league. I simply know—my recollection is, that the gentleman who gave me this credential was a member of that body.

Q. Who was that gentleman?

A. I am not sure now who it was; there were several gentlemen there.

Q. I mean the gentleman that gave it to you?

A. That is what I mean too.

Q. Who were the gentlemen that you have reference to?

A. John Miller, Alex Barrett, Fred Sackett, and a number of others. My recollection is that Mr. Sackett gave me this credential.

Q. Now, you have stated, I believe——

A. Excuse me; I stated before a member of that league gave me these credentials. My recollection now is that Mr. Sackett gave me that credential, and that he is not a member of the Honest Election League.

Q. Is it not a fact that it was generally understood in the city of Louisville, and it was true, as Mr. Baskin stated, that the Brown men and the Taylor men had united in a common cause to defeat what was known as the Goebel ticket?

Objected to.

Q. I will ask you if that was not true. I will ask you if it was not generally understood that the Brown men and the Taylor men were united in the support of Taylor, intending to defeat Goebel?

A. Well, I can not say that that was generally understood, Mr. Kohn.

Q. Well, wasn't that generally the case in Louisville?

A. Well, of the Brown men and the Taylor men that I know, and whose sentiments on that subject I know, I should say that most of those men were in favor of Taylor as opposed to Goebel.

Q. Now, you went to that precinct, as I understand it, and I want to understand you properly, for Mr. Brown, or for no one?

A. I went to that precinct during the election simply as a citizen, and a member of the Honest Election League.

Q. And you were the inspector for Brown after the polls closed?

A. Yes, sir.

Q. And as you have volunteered the statement, after you had voted for Mr. Taylor?

A. Yes, sir.

Q. Now, this darky that you say was living on Linden Square, and had registered on Pearl Street—you know, as a matter of fact, do you not, that Pearl Street is one street and Linden Square another?

A. No, sir.

Q. That one is below the other?

A. No, sir; that is not a fact.

Q. Is not a fact?

A. No, sir; Linden Square is now known as Pearl Street; it is in the City Directory as Pearl Street, and it has been that way for four or five years.

Q. Do you say, as a fact, that Pearl Street and Linden Square are the same?

A. I do.

Q. How many squares does it take in now—Linden Square?

A. Linden Square is just one square of Pearl Street. It was formerly known as Linden Square; the name is still on the side of the houses as Linden Square.

Q. And Pearl Street is above—what used to be known as Lafayette Street?

A. Yes, sir.

Q. Isn't it a fact that Lafayette Street was always a separate and distinct street from Pearl Street, or from Linden Square?

A. Well, I could not answer that question. I don't know how it always was.

Q. Had you known that darky before?

A. Never seen him before.

Q. What was his name?

A. Lindsay Morris.

Q. Now, Lindsay Morris came to you and complained that he could not get to vote?

A. He did.

Q. Finally you went in there with him, and he was sworn as a witness, and so were you?

A. Yes, sir.

Q. Did you expect to get him to vote for Taylor, or for Brown, or for the democratic ticket?

A. I didn't know who he expected to vote for. I didn't ask him who he was for, and I didn't care who he was for.

Q. Had no idea about it?

A. None on earth; I knew he was a negro, and that was all I knew, and I knew he had been refused to vote.

Q. And you were there to get the negro to vote?

A. That was it.

Q. Now, why were you concerned; you had never seen him before; you didn't know whether he lived on one square or on the other, did you?

A. I was concerned, and I testified to the facts that I have just related to you.

Q. That is what he told you?

A. No, sir; I testified that the house that he pointed out to me as his house was in that precinct, and was on Pearl Street. That Pearl Street was known as Pearl Street, was put down in the directory as Pearl Street, and had been so put down for four or five years.

Q. But you didn't know, and don't now know, that that negro ever lived in that house?

A. There was no question about his residence.

Q. How do you know there was not?

A. I was there, and heard the objections made to his vote.

Q. I asked you whether you knew whether he lived there or not?

A. I only knew from what he said to me.

Q. And from what he swore to that day in the presence of the election officers, and said to you, you inferred he lived in the place that he pointed out to you?

A. I certainly did, and I think the election officers did. They didn't examine him on that ground either.

Q. What is his business?

A. I don't know.

Q. Where did he work?

A. I don't know.

Q. Isn't it true that application was made to Judge Miller, the Judge of the Louisville Chancery Court, for a mandamus to raise this very question about the right of the people to vote—the colored people to vote that registered on Linden Square, as voting in the Pearl Street district, and didn't he overrule the motion for a mandamus?

A. I don't know.

Q. You were not down at the Court when that occurred?

A. No, sir.

Q. How many were sent by the Honest Election League to that precinct?

A. The Honest Election League simply requested me to go to that precinct, and I requested several of my friends to accompany me.

Q. Were you the captain of the precinct?

A. I don't know whether I was designated as captain or as anything else.

Q. How many members of the League were there at that precinct?

A. Mr. Rodman Cartmell accompanied me there, Dr. Orville Kennedy, James Quarels and Joe Reed.

Q. Who?

A. Joseph Reed.

Q. Did you all go there by agreement, after a conference?

A. Rodman Cartmell and myself first went there together by agreement, and Dr. Orville Kennedy, I think, came about twelve o'clock.

Q. Now, Mr. Dixon, what I want to get at, so you will understand me, is, how it was that you know——

A. I requested these gentlemen to go there with me.

Q. Who asked you, if any one?

A. I said awhile ago, Mr. Kohn, that I got a letter signed by the Honest Election League.

Q. But what I want to find out if I can, if you know the fact, who was it, either the person or the committee, that all over the city of Louisville designated the squads or the commission to go to each precinct in the city of Louisville in behalf of the Honest Election League on election day?

A. I don't remember their names, as I said awhile ago.

Q. You don't remember their names, or any of their names?

A. No, sir; I remember that Kenneth McDonald was president of the Honest Election League, and that is the only member I remember.

Q. Mr. Arthur Wallace was vice-president of the League?

A. He had some position; I don't remember what.

Q. Did the Honest Election League have any headquarters in the Equitable Building, Room 405?

A. Not to my knowledge they didn't.

Q. Did the Brown party have any rooms in the Equitable Building, No. 405, or any other room?

A. I don't know; I was never there in my life.

Q. Was Mr. Wallace in charge of the Brown movement, or was he simply acting for the Honest Election League?

A. If he was in charge of the Brown movement, I never knew it.

Q. Was there a secretary to the Brown movement?

A. I don't know that. I will say, Mr. Kohn, that I am not a politician, and the interest in this matter that I have taken, has just been as any other citizen would take.

Q. I thought perhaps that you knew what offices they held, or what headquarters they had.

A. I didn't pay any special attention to those matters.

Q. And you don't know what headquarters they had?

A. I do not.

Re-direct examination by Gov. Bradley.

Q. As I understand, I want to see whether I am right about it or not, the Honest Election League asked you to

go there with others on the day of election, and the Brown chairman appointed you an inspector?

A. That is correct.

Q. You were not appointed inspector by the Honest Election League?

A. No, sir.

Q. And you were not requested by the Brown people to go there that day, but by the Honest Election League?

A. That is correct.

A list of the missing precincts in Louisville that could not be found in making the calculation of the registered vote, and the vote actually cast, is herewith submitted.

Lafon Allen, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Mr. Allen, did you assist in making this calculation that has been referred to by Brandeis and Dixon?

A. I did.

Q. What precincts did you count?

A. I counted the following wards: The Fourth, Fifth, Ninth, Tenth and Eleventh.

Q. Have you the calculation there that you made?

A. I have, sir.

Q. Will you please file it as a part of your evidence?

A. I will.

Q. Just write your name on the back of it.

A. It is there.

Q. Is, or not, that calculation correct?

A. It is.

Q. Is, or not, that calculation embraced in the sum total made by Mr. Brandeis?

A. It is.

Q. Is, or not, that sum total correct?

A. I believe that it is. So far as my work is concerned it is.

Q. What was it you counted now?

A. Counted the Fourth, Fifth, Ninth, Tenth and Eleventh Wards. I think it is there.

Q. When did you do this work?

A. I began on Saturday. I did the greater part of it last Saturday; I completed it on Monday.

Q. Under whose direction did you do it?

A. I was telephoned to by Mr. Brandeis, and asked to help in the work.

Q. And you simply took the same matters in the same way, and footed them up?

A. I did.

Q. And ascertained the registered votes, both republican and democrats, and number of votes cast?

A. Yes, sir.

Q. And that is all?

A. That is all.

Q. Did you belong to the Honest Election League too?

A. I did.

Q. Did you do this work for the Honest Election League?

A. This work?

Q. Or without compensation—gratis, for Mr. Speed, or who did you do it for?

A. This work had nothing to do with the Honest Election League?

Q. Who did you do it for?

A. I was asked by Mr. Brande.s to assist in doing it, and did it as a favor to him.

Q. Where were you on election day?

A. I was at one of the precincts.

Q. Where?

A. I don't know the number, on Walnut street between Tenth and Eleventh, almost constantly; some of my time I was at another precinct at West and Green.

Q. Were you captain?

A. No, sir.

Q. Who asked you to go?

A. Ed McDonald asked me to go.

Q. Was he captain?

A. He had more or less charge of the men there.

Q. He is the president of the Election League?

A. No, sir; Mr. Kenneth McDonald is president of the league.

Q. He is the one that testified here the other day?

A. Yes, sir; I think so. The papers so reported.

Q. He is a partner of Mr. Wallace's?

A. Yes, sir.

Q. How many men did Mr. McDonald have under him as captain?

A. He had charge—

Q. Was he captain, or did he have charge?

A. All I know, he telephoned to me a day or two before the election, and asked me to be there with him.

Q. How many men did he have there with him?

A. There were altogether during the day—there must have been five or six gentlemen there, but they were not all there at one time.

Q. Who were they?

A. I can't recall all of them. One was Mr. Pendleton Beckley, Mr. Samuel Castleman; those are the only two others that I recall now.

Q. All members of the Honest Election League?

A. I presume so; I don't know.

Q. Were you inspector there too?

A. I was not.

Q. Who was the inspector there?

A. I don't know.

Q. Who was the Brown inspector?

A. I don't know that.

Q. Know nothing at all about that?

A. No, sir.

Q. Can you give me information, that I very much desire, as to the number of branch offices of the Honest Election League in Louisville?

A. I don't know anything about that.

Q. Did you know there was one in every ward in the city?

A. I did not. All I knew the headquarters was at Fifth and Main.

Q. Is that all you know?

A. That is all.

Q. Who was manager of that thing; who could tell where all these various branch offices were?

A. All I know about the Honest Election League was, Mr. Kenneth McDonald was president of it, and nearly all the gentlemen of my acquaintance were members of it.

By a Committeeman: In preparing these tables, did you examine the registration book as returned to the county court clerk, or is it returned?

A. I don't know; it was in the custody of the county clerk.

Q. And you went to the registration book?

A. We went to the registration book.

Q. Did you go to the poll-book also?

A. In a few of the precincts where the election officers had failed to mark "voted" and "not voted," it was necessary to go over the stub-book to find out what voters in that precinct had voted; there were three or four of them —I made a note on there.

Q. And except in those precincts you relied wholly on the registration book?

A. We did—yes.

Q. And on the registration book there are marks opposite voters' names as if they had voted?

A. There was the word written out.

Q. The word written out?

A. In a large majority of cases; some cases there were check marks.

Q. And you accepted that as true?

A. I did; that is all I could go by.

Q. Didn't go back to the poll-book?

A. No, sir.

Q. (By Col. Breckinridge) On those registers it showed the vote, did it?

A. It did—yes, sir.

R. H. Amburgey, a witness, being duly sworn, and examined by Judge Yost, testified as follows:

Q. Where do you live?

A. I live in Knott county.

Q. What party have you been affiliating with in the past—what are your politics?

A. Democrat.

Q. Did you procure the ballots for that county?

A. Yes, sir.

Q. County clerk?

A. Yes, sir, I ordered the ballots.

Q. Have you any of the stub books with you?

A. Yes, sir.

Q. I ask that you file them with your statement here with this board.

(One is filed on request.)

Cross-examination by Mr. James:

Q. You say you have got none of the ballots?

A. No, sir, I have not got any of them.

Q. This is a sample ballot of all the other issued?

A. Yes, sir.

Q. Where did you procure these ballots printed?

A. Big Sandy News is where I ordered them from.

Mr. Breckinridge: Where is the Big Sandy News?

A. Louise, I think it is printed.

Aleck G. Barret, a witness, being duly sworn, and examined by Governor Bradley, testified as follows:

Q. Where do you live?

A. I live in Louisville.

Q. Were you one of the gentlemen that assisted in making this calculation we have been talking about this

evening concerning the registered vote and the vote that was taken?

A. I was.

Q. What portion of that calculation did you make?

A. I examined the 7th ward and the 2nd ward.

Q. Have you the calculation that you made?

A. I have.

Q. Is it or not correct?

A. It is correct.

Q. Will you please pass it over to the clerk, and write your name over the back of it?

A. I have my name over the back of it. I will say that the 45th precinct of the 7th ward was not counted by me, but was counted in the 5th ward by Mr. Allen, one of the witnesses this afternoon.

Q. Your count there, as far as it goes, is correct?

A. Yes, sir.

Q. Were you present when these various calculations were footed up?

A. I footed up my own calculations.

Q. When the sum total was made?

A. No, sir, I was not.

Q. Of your work and the other work?

A. No, sir, I was not.

Cross-examination by Mr. McQuown:

Q. How many of these precincts or wards did you examine the books of?

A. I examined the 7th and the 2nd.

Q. 7th and 2nd wards?

A. Yes, sir, there was one precinct missing, in each ward, but those that were there I counted.

Q. You know nothing of your own knowledge except in these wards?

A. That is all.

Q. You don't know anything at all as to the correctness of the statement made by the other gentlemen?

A. No, sir.

Q. Do you know, or does that calculation which you have, show how many registered votes there were in the city of Louisville previous to the November election, 1899?

A. You mean at any prior election?

Q. I mean votes registered just previous to the November election, 1899?

A. It shows the number of registered votes in those precincts which were put in the poll books—registered Democrats and registered Republicans.

Q. I asked you how many were there registered in the entire city of Louisville in November, 1899?

A. I don't know anything about the entire city, only what the books show for those two wards.

Q. You can't give us then the registered Democratic vote or the registered Republican voters or those that may have registered as independent or otherwise?

A. For the entire city?

Q. Yes.

A. No.

Q. You know nothing about it?

A. No, sir.

Q. And your calculation does not deal with that?

A. My calculation only deals with what it purports to deal with.

Q. Does not present any other vote except the Democratic and the Republican registration?

A. None whatever.

Gov. Bradley: We want to file pages 32 and 33 of the Courier-Journal Almanac of the year 1900 showing the vote of the city.

Mr. McQuown resumed: When did you make this calculation?

A. I made one for the second ward on last Saturday afternoon, and for the 7th ward on last Sunday morning.

Q. How did it happen that you made this calculation?

A. Mr. Dixon, one of the witnese who testified this afternoon, asked me to do it.

Q. What is your political affiliation, Mr. Barret?

A. I am an independent.

Q. Are you a member, or were you a member previous to the election of the Honest Election League in Louisville?

A. No, I was not.

Q. Did you act with them upon the election day?

A. I was with some friends of mine who belonged to it, but I had no connection with the league.

Q. You mean that you was with them at the polls?

A. Yes, sir.

Q. At any of the voting places?

A. Yes, sir, I was, yes, sir.

Q. With what member or members of the Honest Election League were you on that day?

A. I was at the 16th precinct of the 5th ward, and W. B. Dixon was there; I didn't know that these men belonged to the Election League; W. B. Dixon was there.

Q. Did you not say just now they did?

A. Some of them are, but I don't know about all of them.

Q. How many were in company with you at that time?

A. I went there at the request of a friend of mine named John Miller.

Q. Mr. Miller a member of the League?

A. Yes, sir.

Q. How many persons were there at that poll on that day on a similar errand with you?

A. I couldn't say; possibly six or eight.

Q. How long did you remain at the poll?

A. I was there from 7 in the morning till probably 6 in the afternoon except I went home to lunch, and went away to vote, probably away three hours in that time.

Q. Were you inspector of any kind or challenger, or anything?

A. No, sir, nothing of that sort.

Q. You went home—when, at six?

A. I went home about six o'clock.

Q. You say you are an independent in politics?

A. Yes, sir.

Q. Been an independent always, or ever affiliate with either party?

A. I have always been an independent.

Major Morris B. Gifford, a witness, being duly sworn, and examined by Mr. Breckinridge, testified as follows:

Q. Where do you reside?

A. Louisville, Ky.

Q. How long have you resided there?

A. Since the fall of 1886—1886.

Q. What is your occupation?

A. Lawyer.

Q. How long have you been a member of the bar?

A. Since the spring of 1892.

Q. Have you any connection with the Louisville Legion?

A. Yes, sir, I have been a member of the Louisville Legion with the exception of a few months at a time for the last ten years.

Q. Are you a member of the present Legion?

A. I am.

Q. What is your position in that Legion?

A. Major of the Second Battalion.

Q. What was your position in the former Legion?

A. Well, I occupied the position—almost all positions from private up to first lieutenant, and at the time of the beginning of the Spanish war I was first lieutenant of

Company B of that regiment, and was re-elected after the organization of the regiment as a militia regiment—after we were mustered out of the United States service I was elected major of the Second Battalion on August 2nd, I think it was, last.

Q. Before the old Legion was mustered into the United States service, and while it was part of the state guard of Kentucky, did it have any guns?

A. Yes, sir; it had during the entire time I was a member, it had one Gatlin gun, and three or four—I think they were three inch pieces, and for the last—I wouldn't attempt to state the time—I should imagine a year or two, maybe more, before the Spanish war, I think—it had another one.

Q. Another what?

A. Another Gatlin gun.

Q. So that its equipment of guns, as you remember, was it three 3 inch guns, and two Gatlin guns?

A. Yes, sir, I think it was; I think we had four 3 inch pieces until the time of the G. A. R. Encampment, when we had a serious explosion, and the limber and caisson of one gun was destroyed, and I think the gun was after that sent to Frankfort, disabled, but as to that, I am not positive; I am sure we had three. We have now two Gatlin guns.

Q. Do you know they are the same Gatlin guns the Legion had before, or do you know?

A. I think they are.

Objected to.

A. The only way of telling whether they are the same guns or not would be to observe the number on the guns, because all guns—Gatlin guns are exactly alike.

A Committeeman: State whether you know or not?

A. I can't state positively if they are the same guns.

Q. Have they the same numbers?

A. I have never noticed the numbers.

Objected to.

—Gatlin guns are precisely alike. All Gatlin guns are made alike, all that I have ever seen. I suppose like all other things there are improvements at times coming out on them, but these certainly look like the ones we had before.

Q. How many members—how large is the present regiment?

A. Well, that is a matter of record, I think—

Q. How large was it on the day of election?

A. My battalion had in it at that time an average of between about 55 men to the company, four companies; it

had been 220 men; that was the enrollment on the day of election.

Q. How many men were in the armory on the day of the election belonging to your regiment?

A. Of course, I knew at the time exactly the number of men in my battalion present, but I have no memorandum of it, and don't recollect, but I think there were between 120 and 130 in my battalion.

Q. How many outside your battalion that belonged to the other battalion?

A. The other battalion had fewer men than mine, because of a misunderstanding on the part of one company; it had three companies whereas mine had four, parts, that is of four, there was no full company present.

Mr. Hendricks: How many of those men were present?

A. I state from memory—I think it was between 120 and 130 in my battalion.

Mr. Breckinridge (resuming) Is the regiment composed of Louisville men or of companies outside of Louisville?

A. They must necessarily all be residents of Jefferson county, and I think perhaps all—surely nearly all are residents of Louisville.

Q. They have to be, do I understand you to say, residents of Jefferson county?

A. They have to be, and they have to take an oath that they are residents of Jefferson county at the time they are mustered in; there may have been, of course, some few who had moved out of Jefferson county, but I don't know of any such case. As a rule when such a case occurs, the man is dropped entirely as though he was mustered out.

Q. Were you at the armory yourself on election day?

A. I was, almost the entire day.

Q. What part of that day were you absent from the armory?

A. I reported at the armory at about six o'clock in the morning, and after seeing that my battalion was all right, I crossed over to Seelbach's Hotel, which is on the opposite side of the same square, opposite side of the street, and got breakfast. I suppose I was gone perhaps a half hour. I left again, I should say, about one o'clock, and went home, got my dinner, and changed my uniform —put on citizen's clothes, and went to the polls and voted, and went back to the armory, and then again in the evening. I left the armory at the time the detachment went out under orders—about in the neighborhood of six or seven o'clock.

Q. Were you with that detachment that went out?

A. I was.

Q. Was it your battalion?

A. A very small part of it.

Q. That was the detachment, was it, of which Col. Gray and Col. Mengel have testified?

A. It was.

Q. Were there any soldiers that you knew of of that regiment on the street that day with arms?

A. None at all, except that detail that we just spoke of; we went out at 7 o'clock. The only other time soldiers were on the streets at all to my knowledge—and I was as I say most of the day watching that very thing—was when they went to their meals, some of them at the Normandy Hotel, and others at the Fifth Avenue Hotel, but then without arms and under a commissioned officer.

Q. The 5th Avenue Hotel or Rufer's Hotel?

A. Rufer's Hotel. That I only know from hearsay, I didn't go with them up to Rufer's Hotel.

Q. Did the soldiers, who were voters, were they permitted to go to the polls?

A. They were, and I had charge of that very thing for some, perhaps two hours personally, sending men out in squads, and had each captain make up a squad to go, and they went in citizens' clothes.

Q. Didn't go in uniform?

A. They did not, so far as I saw, during the time I was.

Q. I mean, of course, while you were there. Do you know, major, what was the state of feeling in Louisville just prior to the election, whether there was any excitement in Louisville?

A. I think I know. There was a great deal of excitement. That of course, can only be judged rumor, that we hear people say, and I am very sure I heard a great many people expres grave apprehension about another Bloody Monday occuring in Louisville, and I know I heard a great many say—I don't suppose that that would be evidence—I was going to say that since the election I have heard a great many people say that they believed—

Objected to.

Q. I will ask you whether in your judgment as a lawyer and citizen of Louisville at the time whether the calling out of the militia was a wise precaution to preserve the peace on election day?

A. I think so to the extent that I believe if the governor had failed to have the militia ready that day, he

would have been guilty of gross misconduct—that is to say, gross negligence.

By Mr. James: Malfeasance in office?

A. That is a good word for it.

Q. (Mr. Breckinridge resumes) What is your belief as to whether the calling out of the militia tended to preserve the peace or otherwise?

A. I think it most certainly did. Of course I can't say what would have occurred had it not been called out, but I knew what rumors were afloat, and I also knew there was good foundation for these rumors, and I had never seen a man yet who would admit he was intimidated by the militia being called out, and I know a great many who expressed fears of grave trouble if they were not called out.

Q. I don't know that I have asked you, what are your political affiliations, major?

A. I have always registered as a Democrat, and have nearly always voted as one.

Q. When you speak of nearly always—

A. I voted, for instance—I voted for the Bryan electors in 1896, but I voted for Mr. Taylor in this governor's race. I think I have scratched the ticket several times for friends, and also to vote against men whom I did not think fit for the positions they were running for. I do not mean that to apply to this race at all, but that was for other reasons that I voted for Mr. Taylor in this race.

Q. Were you a member of the Legion at any former election?

A. Yes, sir, as I stated I have been a member of the regiment for almost ten years with the exception of a few months.

Q. Do you know anything about the Legion, or any considerable part of it, being assembled at the armory at any former election?

A. I do. I remember of its being—I have no recollection whatever of the number of men, but I think fully as many, if not more than were assembled in November last, were present in either the November election of 1896 or 1897. That also is a matter of record, and I suppose the pay-rolls can be found.

Q. Was soldiers at the armory both in 1896 and 1897?

A. In my recollection is, colonel, that in all times of public excitement, elections, or excitement of other kinds, there has been a detail at the armory. As to the size of it I can not say. I remember during the time that we had two Boards of Safety and two Boards of Public Works in Louisville, we had quite a large detail at the

armory, but I have no recollection of how many. I was there myself.

Q. When was that that Louisville was so fortunate as to have two boards of public safety and two boards of public works?

A. Louisville enjoyed that honor about—it was during Mr. Todd's term as mayor, I should suppose about four years ago; perhaps not so long.

Q. And how long was the detail at the armory at that time?

A. Well, I know I recollect that I was paid for three days' service, but any part of a day is a day. We may have been there but little over two days.

Q. Do you know by whom you were ordered to assemble at the armory at that time?

A. I don't remember whether the order came to me direct from my captain or whether the—

Objected to.

A. I am very sure I was on duty there and was paid for it.

Q. Have you any knowledge as to by whom the order was given to assemble the guard at the—

A. Only so far as I know how all orders must come to a regiment.

Q. How is that?

A. To a colonel or in his absence to the lieutenant-colonel.

Q. From whom?

A. They come from the governor or adjutant-general—through the adjutant-general.

Q. Do you recollect who was governor at the time that you were called out? When there were two Boards of Safety and two Boards of Public Works?

A. My recollection is that Gov. Bradley was governor at that time, but of that I am not certain, because I don't remember exactly when that occurred. I don't pay much attention to politics, and I don't remember.

Q. It may refresh your recollection by recalling—do you recollect when Mayor Tyler died, or do you recollect?

A. I don't recall the date.

Q. It was at the time when Mayor Todd was mayor?

A. It was at the time when Mr. Todd was mayor.

Q. Were you in Louisville at the time that the Jenny Bowman riot, as they are called was?

A. I was.

Q. At that time, was any one of these guns brought out on the streets?

A. That was shortly before I enlisted in the regiment,

but I saw soldiers there. They had one Gatling gun. As to whether they had more or not, I can't say.

Q. Where was that gun?

A. My recollection is it was in front of the jail.

Q. For the purpose of protecting the jail?

A. Evidently.

Q. When you went into the Spanish war you didn't take any of the arms and equipment of the Louisville Legion into the Spanish war, did you?

A. Well not exactly. We took—

Q. I will confine myself to these two Gatling guns?

A. No, we took no artillery at all. We went as an infantry regiment.

Q. Didn't take either the three-inch guns or the Gatling guns at that time?

A. No, sir, we took none of those.

Q. I don't know whether you were one of the Legion that went to Puerto Rico, or not?

A. Yes, sir, I was.

Q. What was your position in that war?

A. I was first lieutenant throughout the whole time, but on the 3rd of August, 1898, I was assigned to the command of a company. A captain of the company was at home sick, and did not go, and I commanded that company until I was sent to the hospital on October 9th, and I was made quartermaster of the regiment, I believe about two weeks before it was mustered out on February 24th, 1899.

Q. If I understand you, your lineal rank was first lieutenant but you were on duty as captain commanding a company for two months or such matter?

A. As I say, my commission was that of first lieutenant. The first lieutenant may be assigned to the command of a company that already has its full complement of lieutenants. Such was the case. I performed the duty of a captain and drew captain's pay for the time that I commanded it.

Cross-examined by Mr. McQuown:

Q. You have spoken of the Legion being called out at the time of the Jennie Bowman Riots. Who was in command of the Legion at that time?

A. As I said, I was not in the regiment at that time, and I really can't say except from hearsay.

Q. Isn't it a fact that it was Col. Castleman?

A. That has always been my understanding, but I am not certain.

Q. You speak of one of those guns having been upon the street near the jail?

A. I stated that that was my recollection.

Q. Were the soldiers there—I mean was the Legion there—the entire Legion at that time?

A. I did not spend all my time around the jail. I went down there once or twice to look on. It was very difficult to get near enough to see anything, but I am certain that I saw the soldiers there in front of the jail, as to how many I have no recollection.

Q. The gun, I believe you said, was evidently placed there for the purpose of protecting the jail against an assault—some persons were confined there that were threatened by a mob, were they not?

A. Such has been my understanding always.

Q. I will ask you to state if it is not also a fact that when that militia was called out and placed in active service for the purpose of protecting those persons against the mob, that that Legion was under the command of Judge Jackson, who was then Judge of the Jefferson Circuit Court. I mean the elder Judge Jackson, and who was the Civil Officer?

A. I think not, for two reasons. The first is, I really don't remember that the law does not provide for the militia being placed under the command of a Circuit Judge. That is the best reason I have for thinking that could not be so.

Q. Col. Castleman, you think, was the Colonel of the Legion at that time?

A. I am sure he was.

Q. Well, he would be likely to know about that better than you would on account of the fact that you were not a member of the Legion and was quite a young man at the time?

A. He undoubtedly would know more about it than I do.

Q. You have spoken about the Legion having three three inch guns, I believe, or perhaps four, and one of them exploded on the occasion when there was a parade?

A. I didn't say the gun exploded, I said the caisson exploded.

Q. There were three of them left? At that time didn't you have an artillery company organized that drilled with and manipulated and used those guns?

A. I will state that we had for a great many years—in fact during my, all of my connection of the regiment, one company that was called the Battery by courtesy. I suppose on a few occasions they drilled with those guns, but the Gatling Guns were more than once assigned to the Infantry Companies and a gun squad appointed to

take charge of them. These other guns, we had no horses for them, and it was very inconvenient to have an artillery drill with guns of that size without horses, and in a building, and so there was very little drilling done with them.

Q. With the Gatling Guns?

A. I referred to the three inche pieces then. I said the other guns.

Q. But still you had a company that was designated and known as the Battery company?

A. We did.

Q. And that company was drilled in—acquainted with the drilling of the Artillery?

A. I am no prepared to say that it was.

Q. Did you have at the time of the organization of this regiment, or between that time and the time that Gov. Bradley called it out, any such company as that, drilled in the artillery?

A. Oh, Capt. Colson, when he was getting up his company, that was with the idea of making a Battery of it. That was a hobby of his, and he was very anxious to have a Battery.

Q. When was that?

A. At the time we were organizing the regiment. I have heard him mention it, and I have heard others mention it. It was the general rumor that Capt. Colson's company was to be a Battery. I can explain why it was not.

Q. I didn't ask for that. When was it that that company was organized?

A. As to the exact date that Capt. Colson began to organize his company, I can't say, but it was along in the spring of last year, and it was some months that we were delayed by one thing and another in getting mustered in, chiefly by the County Judge.

Q. When were you mustered in?

A. The first company, I think, was mustered in on July 11th or 12th, and the last one on, I think, July 27th.

Q. Between those dates, Capt. Colson's company was mustered in, was it not?

A. Yes, sir.

Q. Did he make or did anyone in command make an application for these Gatling Guns at that time in order that that company might drill and become acquainted with the use of the guns?

A. I will say this: I don't think Capt. Colson ever entirely gave up the idea of making it a battery, but on August 2d, I think, was the date he was elected Major

of the First Battalion, and he was principally the life of the company and as to what that company has intended to do since, I don't know, whether they wanted it still to become a Battery or not. But not of my battalion.

Q. There was no distinctive battery company organized or any Legion than that that you have spoken of with these other companies mustered in?

A. That is true, but I will say that we didn't have the pieces that originally belonged to the old Battery. As I said before the Gatling Guns were assigned frequently to infantry companies, and that is what we wanted with them.

Q. You made no application or request for these guns at that time?

A. I made no application, because artillery is not my hobby. I did not want them myself, but I wanted the regiment to have them, and always expected that the regiment would get them, was not at all surprised when we did get them.

Q. When did they get them, as a matter of fact?

A. We got them—as to one I can't say except from rumor, but as to the other, I brought it from Pewee Valley myself. I think it was the 6th of October.

Q. That was the day before the election?

A. Yes, sir.

Q. What time did you arrive in the city with the gun?

A. I arrived in the city with the gun about—well, shortly after dark, I suppose about seven or eight.

Q. Who accompanied you to the city with that gun?

A. No one.

Q. Where did you get the gun from?

A. I got it from the Pewee Valley Company. I believe that company was known as Battery A of Second Regiment. The company had practically gone to pieces. I found the gun in a stable.

Q. When did you go to Pewee Valley for it?

A. I went on the same afternoon that I brought it in. I brought it in that evening.

Q. You went on the afternoon of November 6th?

A. Yes, sir.

Q. What train did you leave Louisville on?

A. I left Louisville on the train that leaves there, I suppose in the neighborhood of four o'clock, but I am not certain; I know I got out to Pewee Valley, and had barely time to get my supper at some friend's and to get the gun over and get it on the train and come back.

Q. Where was the gun at Pewee Valley?

A. It was in the stable of Capt. Ed. Matthews, who was Captain of that Company.

Q. How far from the depot?

A. I suppose that stable is between three and four hundred yards from the depot.

Q. Who assisted you in getting it to the train?

A. Several men of that company. I found Sergeant Wm. Selden, I believe his name is, and Lieut. Foley of that company and told them I wanted the gun brought over to the train, and we went over together and I believe Sergeant Woodruff accompanied us, and we brought the gun over and put it on the platform, and I told them then, one of the Sergeants, to get the thing to pieces so I could put it on the train and have it ready to put it on the train—a detail there to put it on when I came back from supper, and I went to supper and came back and found things ready.

Q. What train came along and took the gun to Louisville?

A. I can't state the exact time.

Q. Was it a passenger train or a freight train?

A. It was a passenger train.

Q. Cincinnati train or a C. & O. train or a Lexington train?

A. I haven't the faintest idea where that train comes from. I ought to know. I used to live there. It was in the neighborhood of, I suppose—I know the people out there have supper at six o'clock, I must have gotten there sometime about half-past 6, it was in the neighborhood of 7.

Q. It was then after dark that you got the gun upon the train to take it to Louisville?

A. My recollection is it was about dark, yes, sir.

Q. Near 7 o'clock on the 6th of November, wouldn't that be about dark or a little after dark?

A. Perhaps a little after dark.

Q. Then you had the gun taken to pieces, and with the assistance that you had summoned to your aid, put upon the train, did you put in the express car?

A. Yes, sir.

Q. Ship it as express matter from Pewee Valley to Louisville?

A. Now, let me see, it must have gone by express.

Q. There would be no other way?

A. I didn't settle for it; I told them to send the bill to Col. Mengel because he had charge of those matters—fiscal matters of the regiment.

Q. But you had it shipped by express, as that would be the only way you could send it upon a passenger train?

A. Yes, sir.

Q. When you got to Louisville, what did you do with it then?

A. I had it taken off the train.

Q. What depot did you arrive at?

A. First street depot, First and Water.

Q. Had it taken off at First and Water streets?

A. Yes, sir.

Q. What did you do with it then?

A. I then had it fastened on behind an express wagon, that is the reason I remember it was sent by express, because it came down and we pulled it up to the armory, and I went in and reported to Col. Mengel that I had that gun out there, and he said to take it down in the cellar. The cellar is entered by the alley on the rear of the building. From Main street, there is a considerable drop back to the alley, and there is an additional story back there, and we took it and had them to run it around and into the cellar.

Q. You run it in the rear of the building in the basement or cellar?

A. Yes, because you couldn't get it down the narrow stairs inside—yes, I was about to say I didn't think you could get it in the front door, but I think you can, because they got the other one in.

Q. When was the other one put in the front door?

A. I didn't see the other one come in, but from reading the newspapers and hearing it talked, I could form an opinion.

Q. When did you first see it there?

A. I first saw it there that day.

Q. On the 6th of November?

A. 6th of November?

Q. Had you been there at the armory the day before?

A. No, I think not. I don't think I had ever been into that armory more than twice before or three times at the most.

Q. Didn't it come that day?

A. That is my opinion.

Q. Where did that one come from?

A. I know that only from hearsay. I think—I have heard it came from Lexington.

Q. Don't you know it to be a fact that Col. Mengel went to Lexington in company with the Governor and the Adjutant-General and procure the gun a day or two before that?

A. I most certainly do not, and I have never heard it mentioned till I heard, I believe I heard Col. Young ask Col. Mengel something of the sort the other night, and I do not think it is true.

Q. When did the ammunition come for these guns?

A. You use the same ammunition in the Gatling guns that you use in the Springfield rifle. You get the correct weight.

Q. When did you get the ammunition for the Gatling guns?

A. I don't know, I brought no ammunition with the gun I brought in.

Q. Was there no ammunition at Pewee Valley?

A. If there was I didn't know it.

Q. When did the ammunition come to the armory for the Springfield rifles and Gatling guns?

A. It came when the rest of the equipment came, I suppose, but I don't know.

Q. On that same day—6th of November?

A. No, we had had the equipment before that; we had issued it before that.

Q. How long before that?

A. I think it was the week before.

Q. Don't you know they were ordered on the 28th of October and received on the 30th—the equipment and the balance of the—

A. My understanding was that the requisition for all that stuff had been sent in long before—perhaps by August, I think it was in August.

Q. Col. Mengel sent it in?

A. I don't know who sent it in; but he would be the proper man to have sent it in, and I am almost sure he made a requisition for everything we needed back in August, it was always my understanding he had.

Q. About what day in August?

A. Sometime after the 2d, because I think it was on the 2d he was made Colonel.

Q. It was made then, the requisition for these equipments and ammunition, sometime in August?

A. I stated that that was my impression, I don't know: I made no requisition of any kind for anything.

Q. They were not received, however, until a few days before the election?

A. I believe that is so. I think the reason was we had no place to put them.

Q. There was no place to put them?

A. Exactly.

Q. When was the armory rented?

A. As to the day, I don't know. It was somewhere along the latter part of October.

Q. The armory was rented in October?

A. Yes, sir.

Q. Was that armory rented before or after Col. Mengel made the trip to Lexington?

A. As I stated, I don't know that Col. Mengel ever went to Lexington, and there is nothing for me to found such a supposition on, even.

Q. You don't know anything about that?

A. I do not.

Q. You read his testimony, didn't you, as delivered in this case?

A. I did not; I heard part of it, but could not hear it all.

Q. I will get you to state to the Board if the fact that these guns had been received, that the equipment had been received for the Legion and the ammunition had been received, was not announced in the daily press of Louisville on the day before the election, and if you didn't see it?

A The public press had kept up with the movements of the Legion from the time that we first began to organize it last spring or winter, and I think everything was reported with more or less accuracy, every step we made. I am very sure they commented upon our getting the armory and having the equipment.

Q. And the arrival of the guns?

A. No, sir, the one gun only.

Q. The arrival of the Gatling guns?

A. Of one Gatling gun. The public press, it was a matter of comment between Major Colston and myself, they said nothing about any gun but one, I remember, and I talked to him about it on account of the remark that the papers reported Gen. Castleman to have made.

Q. Is it not a fact that the arrival of that gun was not only chronicled but the amount of the ammunition, the number of the rounds of ammunition received for the gun, and the number of rounds for the rifles, small arms, was also stated?

A. That is possibly so, but I don't recall that they made—that they got those things accurately at all. They generally miss little things like that.

Q. Was it not also stated in the public press of the city in connection with these facts which I have called your attention to that Gov. Bradley was there to assume charge of the militia upon the next day?

A. Well, I can't say that that is true, either, I don't really remember, I suppose they knew it, I heard that, I don't remember whether I heard it the evening before or the day of the election.

Q. You know that it was well known and understood

in the city of Louisville not only that these guns and their ammunition had arrived, but that the Governor was there in person and would take charge of the militia upon the next day?

A. No, I can't say how well known those facts were, I suppose—

Q. They were well known?

A. I should suppose they were known to some extent.

Q. You have said that there was a great deal of excitement in Louisville about that time. What caused that excitement, Major?

A. I think chiefly lack of confidence in the police and fears of a repetition of such outrages as had occurred at the primary last June.

Q. There wasn't anybody interested in that except the Democrats, were there, in that primary?

Q. The Republicans and Independent men and Honest Election Leaguers had nothing to do with that, did they?

A. It was the part the police were supposed to have taken in it that caused apprehension.

Q. That caused all the excitement and apprehension?

A. Well, chiefly; the people seemed to believe that the city administration was strictly in favor, of course, of the election of the Democratic ticket, and that they would use the police as they had used them before.

Q. That was not a primary called under the statute of Kentucky, but was a mere party arrangement or agreement between the candidates themselves, and a part of a political party, was it not?

A. I can't say certainly what it was.

Q. You mean to say you don't know now whether that was a primary under the statute governing the holding of primary elections, or whether it was a primary held simply by consent and direction of the governing authorities of a party?

A. My understanding was, if you want that, that it was a primary not under the statute, but that hasn't anything to do with the apprehension of the people about the conduct of the police.

Q. I thought it did, I thought—I may be mistaken—but I certainly understood you to say that it was on account of some conduct of the police in reference to that primary that created this grave apprehension in the minds of the public in the city of Louisville?

A. I do think that was one of the things. It is just two ways of stating it.

Q. How long was that grave anxiety in existence in

the minds of the public in the city of Louisville before the election?

A. I think ever since—well, always after the Music Hall Convention, and after that primary; but the Music Hall convention aggravated it.

Q. The Music Hall Convention aggravated it?

A. That was my judgment.

Q. Do you know how many policemen there were in the Music Hall convention?

A. I do not; I did not go near it the whole time.

Q. Of your own knowledge, I don't suppose you know whether they took any part in it or not?

A. I do not.

Q. You were living, and I believe were in Louisville, from the time of the Music Hall convention down to the election, all the time?

A. With the exception of perhaps three weeks.

Q. Were you in the city at the time there was a meeting held at the Board of Trade when certain gentlemen made speeches for the purpose of allaying the public excitement?

A. I have heard about that, but I was not present at the meeting.

Q. You didn't hear the speeches made then by the city officials and Mr. Bell, the sheriff?

A. I did not.

Q. You say that the conduct of the police in the June primary and in the Music Hall Convention, one a Democratic convention and the other a Democratic primary, caused all of this anxiety and all of this apprehension?

A. I stated that that was my opinion, of the reason for the apprehension that every one nearly seemed to feel.

Q. Don't you know that at that meeting of the Board of Trade that Mayor Weaver, Mr. Lyons, of the Board of Safety, Mr. Suter and Mr. Tierney, and also Mr. Bell, the Sheriff of Jefferson County, made speeches in which they pledged themselves to the citizens of Louisville to preserve the peace and order upon the election day, that there should be a fair and free election, and was it not so reported in the public press of the city at the time?

A. Oh, of course, I have heard that such speeches and pledges were made, but I have heard more about it here than I ever heard before.

Q. You say, of course you have heard it. Do you mean by that to say that if these pledges were made, that they were of no force or efficacy?

A. I can't say whether they were of any force or

efficacy or not. You are asking me about the feeling among the people.

Q. Do you mean then that the pledges of these officials that I have referred to were regarded as amounting to nothing in the city of Louisville, do you state that to be the public feeling at that time?

A. I can say this, that so far as I had the opportunity of judging, I don't think it allayed the excitement any.

Q. Who was it that was keeping up all this excitement?

A. It seemed to me that nearly every one I knew—

Q. Tell me somebody and tell the Board some of these people that were keeping up this excitement?

A. Well, I don't know of any one that was voluntarily keeping it up. It was keeping itself up. People were afraid.

Q. Tell me somebody that was intimidated in that business, or that was actually keeping, voluntarily or involuntarily, this excitement up?

A. Well, now, of course it is almost an impossible matter for a man to go back and name—give the names of persons and just what they said, but I know this; I have heard even a great many people whom I didn't know—I ride to and from my office, making four trips in the day on the rear platform of the street car, smoking, almost every day, and there were nearly always from seven to eight men on the rear platform, and there is where I heard, of course, a great deal of it, when I would have time to talk; and in that way I know I used to hear every day conversations on the subject. I think it is safe to say every day and more than once a day, and it was the general talk throughout the city.

Q. Those gentlemen were, like you, smoking a cigar, after they had been home at their meals, and were discussing the current events of the day; were they excited when they talked?

A. I can't say that I ever saw any of them talking, before the election, show any great amount of excitement, but I have heard them express fear that there was going to be bloodshed in Louisville on election day.

Q. You have heard that expressed very frequently around Frankfort since you have been here to-day?

A. Yes, sir, and there has been some of it, I believe.

Objected to.

Q. Still, I will get you to state if it is not a fact that this talking which you have referred to as excitement, was or not principally done by the gentlemen who composed the Honest Election League, and if they didn't keep up the agitation which you have referred to?

A. Well, I can't say because I don't know who ever belonged to the Honest Election and who did not.

Q. What car did you ride back and forth between your home and office?

A. On what is called the 2d street car.

Q. It was upon that place that you heard most of the talking?

A. That was one of the places where I heard a great deal, but you heard it every place you went. The first thing a man would say to you, when you got in conversation, "Well, do you think there is going to be any trouble?"

Q. Didn't the Mayor issue his proclamation in which he announced to the citizens of Louisville on Sunday morning preceding the election that there should be a fair and a free election, and that he would preserve the peace by all the power at his command—didn't you see that printed the Sunday morning before the election?

A. I don't remember whether I read it or not; I remember there was such a proclamation.

Q. Didn't that quiet the people in the city of Louisville?

A. I don't see why it should, I don't think it did. I can't see why it did. It was the same Mayor in office when the other affair had occurred in June.

Q. You think that that proclamation had no quieting effect?

A. I think it had none at all.

Q. You say it had no effect whatever?

A. I say, I think it had no effect.

Q. I mean in your judgment, of course, that proclamation had no effect upon the public mind one way or the other?

A. Exactly.

Re-Examination by Col. Breckinridge:

Q. Was there any more ammunition sent in answer to the requisition of Col. Mengel to this, Legion, at this time than was usual in the history of the Legion?

A. I do not know how much was sent to Col. Mengel. If the amount that was stated here the other day was correct, it would have been in the neighborhood of 25 rounds per man, and that would have been a small amount. I think the old Legion always had more than that.

Q. You have spoken of an artillery company Battery A of the old Legion; in the formation of the new regiment do you know whether there were a number of men who

had belonged back in the old regiment; have you any knowledge as to that?

A. We have one man—I know one officer who was formerly an officer—Lieutenant Carroll. I understand there are quite a number of that battery.

Q. Does it take any particular skill as a artillery man to use the Gatling gun?

A. No, sir; I know almost nothing about artillery, and yet I know how to handle the Gatling gun.

Q. The Gatling gun which you have, first belonged to a company of Pewee Valley which had disbanded or which had ceased to exist?

A. That company was theoretically in existence at that time by practically was not in existence.

Q. Do you know where the other Gatling gun had been?

A. I understood at Lexington.

Q. You have spoken of the primary. Mr. McQuown asked you whether that was not a family difficulty between Democrats. Do you know whether the people thought, and you thought that the people would commit such outrages in order to get only nominations, would not they commit similar outrages at regular election when the same persons were candidates for election?

Objected to.

By the Chairman: I think the question as asked is objectionable.

Andrew Cowan, a witness called for contestee, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. Where do you live?

A. In Louisville.

Q. What is your occupation?

A. Merchant and Manufacturer.

Q. How long have you lived in Louisville?

A. 34 years.

Q. What are your political affiliations?

A. Republican.

Q. Were you in Louisville at the election on November 7th 1899, and a few weeks prior thereto?

A. I was.

Q. What was the state of the public mind of the people at Louisville at that time as to any apprehended trouble upon election day?

A. There seemed to be a great apprehension of trouble.

Q. Can you state to the Board, in your judgment, how widespread that apprehension was?

A. The meeting at the Board of Trade was the first illustration of that feeling during that canvass, which was addressed by the Mayor and Chairman of the Board of Safety and Chief of Police was the first illustration that I had of the intense excitement that prevaded the minds of a great many of the people. I confess I was amazed at it myself. I did not become aroused until about eight o'clock on the night before the election. I think I kept cool all the way through, and counciled peace.

Q. Were you present at that meeting at the Board of Trade?

A. I was, sir. Mr. Stikes and Judge Humphries, and the Mayor, Mr. Lyons, Mr. Caruth, and Chief of Police Haager and Judge Barr spoke. I did not hear Sheriff Bell speak.

Q. What was it that made you become aroused about eight o'clock of the evening preceding the election?

A. The removal of so many election officers—that aroused me. I think it was a stupid blunder.

Q. What, in your judgment—what is your judgment as to the order assembling the first regiment at the armory on election day was a wise or a proper precautionary measure or otherwise?

A. I thought it was very prudent and very proper under the circumstances.

Q. Was it, or not, in your judgment the means of preserving the peace in Louisville on election day?

A. Well, sir, we had a very quiet and orderly election. No one can tell what we might have had if the Legion had not been assembled. That is all I can say in regard to that.

Q. Were you in Louisville on election day?

A. I was.

Q. What sort of an election was it?

A. I never saw a quieter election in Louisville. I drove all over the eastern part of the city in the morning between 10 o'clock and half past twelve and in the afternoon I drove over the central part of the city from the Fourth street as far west as Eleventh and as far south as Breckinridge street so as to see what was going on.

Q. Were you a candidate that day?

A. No, sir.

Q. Were you present as a member of that league at any of the polls?

A. No, sir.

Q. Do you know of any person in Louisville who was intimidated by the presence of the military, or have you any reason to believe that any persons were thus intimidated?

A. No, sir, I don't think there was a voter in Louisville intimidated by the election. The Legion has always stood for law and order in Louisville.

Q. You were never a member of the Legion were you?

A. No, sir.

Q. Did you have any military experience during the late war?

A. I was in the civil war—went the 16th of April, 1861, and remained until 1865.

Q. With what troops?

A. The Army of the Potomac.

Q. What regiment?

A. First in the infantry as a private soldier, was made Sergeant of the company, and then under authority of the War Department raised a New York battery and at the close of the war I was a senior officer of that battery.

Q. What rank?

A. Brevited Lieutenant-Colonel.

Q. Did you see Gov. Bradley in Louisville?

A. I did not, and was not asked to see him.

Cross-Examination by Col. Young:

Q. You have always taken a more or less active part in the politics of Louisville?

A. I think that more or less interest might more properly express it.

Q. You have been a candidate for office on two occasions?

A. Yes, I was elected a Park Commissioner; and the second time was counted out.

Q. You did not get in?

A. Yes, I did get in; one of the men they elected ran away and I was put in his place by the Board—by a Democratic Board.

Q. Were you in Louisville when the Baxter-Jacob race took place?

A. Yes, sir.

Q. There was a great deal of excitement then?

A. Yes, but not of this kind.

Q. Were there not for two or three weeks before the election day public meetings called, an overflow of meetings, and the most extremely violent resolutions passed —denunciation of Baxter, arousing the people to threatened resistance?

Objected to, overruled.

Q. You were there in the days of the Baxter-Jacob election?

A. Yes, sir.

Q. There was an effort to have the militia called out?

A. I have no knowledge of it.

Q. It was not called out?

A. I don't know whether it was or not.

Q. In the Tyler and Reid election was there not a very great excitement in Louisville; and public meetings were called and many people wrought up to a great state of apprehension?

A. No, sir, I can't say they were.

Q. You don't know that?

A. I don't think there was any talk of riot and bloodshed—bloody Mondays as was so common in this last campaign?

Q. You spoke of the Board of Trade meeting—you went there?

A. Yes, sir.

Q. The people who went there was largely from Main street?

A. Yes, sir, and a good many of the city officials too.

Q. But they were called there to make an explanation to the meeting?

A. They were invited, so I understood.

Q. The men who were in that meeting were men who were largely interested in corporations either directly or indirectly?

A. A very small percentage. What do you mean by "Men who were interested in corporations?"

Q. Men who were either managers of corporations, or stockholders or attorneys for corporations?

A. Well, I don't know. I could not, of course, know who were stockholders, but as to those who were managers of corporations, I think they were comparatively few.

Q. John Stikes was there?

A. Yes, sir, he was chairman.

Q. He is president of the Fidelity Trust and Safety Vault Company and numerous other corporations?

A. President of the Fidelity Trust Co.; I don't know about the others.

Q. That is one of the leading financial institutions of the city?

A. Yes, sir.

Q. Mr. Stikes had been acting in the raising of political fun of this election one side or the other?

A. No, I don't know.

Q. You knew that that was reported?

Objected to. Objection withdrawn.

Q. Gen. Duke was there?

A. I am not sure.

Q. Mr. James P. Helm was there?

A. I am not sure.

Q. Mr. Alex P. Humphrey was there?

A. Yes, sir, one of the speakers.

Q. Mr. Humphreys represents some six or eight corporations?

A. I don't know any of his clients.

Q. You don't know whether he represents the C. & O. Railway Company?

A. I don't know.

Q. Do you know whether he is consulting attorney for the Louisville and Nashville?

A. I don't know.

Q. Mr. Helm Bruce was there?

A. I don't know, remember seeing him.

Q. Mr. H. V. Love was there?

A. I don't remember.

Q. Tell me anybody you saw there?

A. It is pretty hard to recall the names. I might represent some people to be there, who were not there. I saw Mr. George Gaulbert there.

Q. Mr. George Gaulbert is a member of the firm Peaslee and Gaulbert, and is largely interested in the corporations of the city of Louisville?

A. He is one of our large merchants.

Q. Don't you know he is at the head of Peaslee and Gaulbert?

A. He is the head of the Peaslee and Gaulbert Co., but what other business associations he has I do not know.

Q. George C. Norton?

A. Yes, sir, he was there.

Q. The head of one of the wholesale dry goods houses on Main street and a man of prominent financial standing and wealth?

A. He is one of the leading dry goods merchants of Louisville.

Q. Who else?

A. I remember John Barrett, who is now a senator from Louisville. He sat close to me.

Q. Mr. Barrett was a candidate for office on the Republican ticket, for senator from one of the Louisville districts?

A. He was.

Q. In your district?

A. Well, yes. Colonel, all Main street was there, everybody that I know was there. I say in a general way that the representative business men were there at that meeting to the number of 200.

Q. When you say, "All Main street was there" you mean the men who are connected with the financial institutions and corporations of our city, were there?

A. Men who are connected with the leading business enterprises of the city were there.

Q. You heard Mayor Weaver speak?

A. Yes, sir.

Q. You have known him a long time?

A. Yes, sir.

Q. Did you disbelieve in his sincerity?

A. He made a very favorable impression.

Q. What about Co!. Haager?

A. The same way.

Q. There are two Republican factions in the city of Louisville known as the Hambrick and Davis factions?

A. I only know that from the newspapers.

Q. Do you affiliate with either one or the other?

A. I have no connection with either one of them.

Q. Do you not know that for a long while those two Republican bodies have had a fierce and bitter contest between themselves?

A. Yes, sir, by reading it.

Q. Was it not carried into the courts and there decided—

Objected to, sustained.

Q. The Hambrick and Davis factions were in the Republican party up to the time of this election?

A. All I know in regard to these factions in the Republican party is derived from the newspapers.

Q. Now you said that you got aroused the night before the election?

A. Yes.

Q. And that that arousement came from the change in the election officers?

A. Yes, sir; I thought that meant fraud.

Q. You did not examine into the fact yourself?

A. No, it was not necessary.

Q. Then you know nothing of the facts?

A. Do you want me to give just what I know about the removal of the elections?

Q. If you know it of your own personal knowledge?

A. The first I knew of it was when it was announced

at a meeting at the headquarters of the Honest Election League.

Q. Were you there that night?

A. Yes, sir.

Q. And this announcement was made, and that is all you know about it?

A. No, sir; that is not all.

Q. That is all you know personally about it?

A. No, sir. Of course, I had no personal conversation with Mr. Caruth or Mr. Hoertz.

Q. You never sought an explanation from these gentlemen of the cause of their course in that matter?

A. No, sir; I did not think it necessary.

Q. You said you were aroused; what did you do when you became aroused? I know you mean a great deal when you are aroused?

A. I did not do much.

Q. Didn't do anything?

A. No, sir, I didn't even arm myself; I have never carried arms since I have lived in Kentucky.

Q. You went immediately to the headquarters of the Honest Election League?

A. I did not.

Q. You were there when you heard this news?

A. I was invited to meet at the headquarters of the Honest Election League at four o'clock on Monday afternoon preceding the election. I think that the letter which came to me was signed by John Stikes, in which he stated that the Committee desired the advice of some cool-headed citizens; that was the nature of the letter. That is the only one of the meetings I attended. I went there. Soon after I entered the room two gentlemen came in in a state of great excitement; they were Mr. John W. Green and Mr. John B. Pyrtle, who had received notices directing them to attend some precinct on the following day in the interest of the defeat of Mr. Goebel; and they thought that these notices had to come from the Honest Election League, and they announced, evidently under great excitement, that they would have nothing whatever to do with it; they had joined the Honest Election League as non-partisan. When they spoke of these notices everybody there—the secretaries disclaimed having such a notice to these gentlemen. I suggested that Mr. Green should go and bring the notice; I asked him if he had it; he said no it was at his office—that he had thrown it in the waste basket as soon as he got it. I suggested fishing it out, and when he brought it, folded and crushed as it had been in the waste basket in the way he had

thrown it in, it was found to be a letter addressed to him from the Brown Headquarters, and not the Honest Election League. The purpose I had in going to that meeting was to urge that the men selected to represent the Honest Election League at the polls should be warned and cautioned not to carry arms, and I did that.

Q. Did you know at that time that the Legion was going to be called out?

A. I did not.

Q. Had you heard anything about it?

A. Nothing.

Q. Had not you seen any statements of it in the papers?

A. I saw some suggestion about Gatling guns or something of that kind, but I paid no attention to that. I went out that evening and I met Mr. Kelday, who is now a member of the Legislature, and was then a candidate, at the barber shop before I went home. He came in very much excited, and said the whole thing was up, that 87 election officers had been changed. (By Col. Young. I did not ask you about that.) I assured him there was nothing in it. The second report came that it was true. I went out to the Auditorium as soon as I got supper to hear Gov. Bradley speak; and when I got there I found Mr. Wilson speaking. I listened to Mr. Wilson a little while, and Mr. Kelday came in and said he was right and I was wrong, that the officers had been changed.

Q. You said you did not find anybody who was intimidated by the presence of the militia. I want to ask you if you asked any gentleman that question?

A. No, sir.

Q. Then you have no means of having any knowledge on that subject?

A. It is negative entirely.

Q. You say this was a very quiet election. Of something near 43,000 votes 10,000 did not go to vote. Did not that have a quieting effect in the streets. Be more quiet that otherwise?

A. There were as many people standing about the polls as usual. The same old tactics of fraud were carried out. We have not had an honest election in Louisville for 25 years.

Q. You elected Republicans once in Louisville?

A. Yes, sir, we did.

Q. You carried it for the Republicans?

A. Yes, sir; they were not able to cheat us out of it, but in close elections they always count us out.

Re-examination by Col. Breckinridge:

Q. You said something about 87 election officers being removed?

A. That was reported that evening.

Q. Do you know the city well enough, to know what was the political complexion of the precincts in which those changes were made the night before the election?

A. No, sir; I made no study of it.

Q. Did John W. Green of whom you spoke is a stock and bond broker?

A. Yes, sir.

Q. He is an old Confederate?

A. Yes, sir.

Q. (By a member.) Do I correctly understand you to say that the presence of the militia in Louisville was the cause of the quietude on election day?

A. No, sir; I did not say that. I said we had an exceedingly quiet and orderly election, and no one can tell what might have occurred if the militia had not been called out.

Q. I thought I understood you to say that the presence of the militia had caused that—if it had not been there it would not have been quiet?

A. No, sir; I didn't say that; I don't think anyone should say that.

Thomas Lawson, a witness called for the contestee, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. Where do you live?

A. Louisville, Ky.

Q. How long have you lived in Louisville?

A. Since 1866.

Q. You moved to Louisville in 1866?

A. Yes, sir.

Q. From where?

A. I was in Kentucky before that time. I came originally from Virginia just out of the war.

Q. You had military experience during the war?

A. Yes, sir.

Q. How long?

A. Four years and nearly five months.

Q. (By the Chairman.) From what part of Virginia?

A. I called Richmond my home.

Q. (Col. Breckinridge resumes.) When you came out of the war what was your rank?

A. Major.

Q. Have you held any official position since the war?

A. None of any importance.

Q. You have lived in Louisville ever since that day?

A. Yes, sir.

Q. What has been your political affiliations?

A. Been a Democrat, sir.

Q. In these troublous times with the council mixed up as they are, what sort of a Democrat are you?

A. Well, sir; I have been a very straight Democrat, up to very recent times. I took issue with some of my friends here at the time of the Bryan race. At that time I was a Bryan Democrat. I see two of my friends have departed, Mr. Phelps and Mr. Kohn.

Q. In the last race?

A. In the last race I was for Gov. Brown and made speeches for him some.

Q. Were you in Louisville just prior to the late election?

A. Well, sir, I was in Louisville from time to time all during the campaign. I was out of the city at times.

Q. Was there, or not, any excitement in the city of Louisville, and apprehension of danger or trouble upon election day—a fear that there might be trouble?

A. Yes, sir.

Q. In your judgment was the calling out of the first regiment and the assembling of it on election day, a wise and precautionary measure in the interest of peace?

A. I think it had a tendency to assure the people of safety and peace.

Q. What, if anything, according to your best judgment, was the effect of having that regiment at the armory on that day?

A. There had been a great deal of outside talk; a great deal of talk by irresponsible persons on the street that they proposed to control the election; that the people would vote but they would do the counting, and there seemed to be an apprehension that that would be the trouble; and the people I saw and talked to immediately after I heard of the legion being called out, said that that would end all trouble and things would be fair on election day.

Q. Were you in Louisville on election day?

A. I was.

Q. Were you at any voting precinct on that day?

A. I was at the third precinct of the eighth ward.

Q. Where was that located.

A. Located on 6th Street, between Walnut and Chestnut.

Q. What is the complexion of that precinct?

A. It was very mixed; a large negro vote there—voted at that precinct, but there is a considerable white vote also; the race is nearly equally divided.

Q. Will you state to the board what fact, if any, you know existed at that election—as to whether there was any obstruction or delay out there in the voting?

A. There was a great deal of delay of this sort; a negro would come into the precinct to vote and be turned out—indeed, I heard the same thing asserted by some of the precinct officers that they were not allowed to vote, although they claimed to be registered.

Q. What was the assertion of the officers?

A. I made some inquiry as to why they were not allowed to vote and the officers—or rather the sheriff who was at the door—I also heard the clerk state the same thing—said that they had received instructions that where these negroes came up, that they would have to prove their residence there at the place from which they had registered, by two white voters in that precinct.

Q. Did they say from whom they received those instructions that the negroes should prove their right to vote by two white voters in that precinct?

A. No, sir; I asked that question but they did not tell me from whom they got them; declined to give it.

Q. At that time do you know whether they were carrying out those instructions?

A. Of course, I could not know from the fact that I was entirely outside the precinct, except from the fact that in the hearing of these officers, these negroes were complaining that they were not allowed to vote without bringing two white witnesses of that precinct.

Q. Do you know how long during the election—the time the polls were opened, this mode of construction was continued?

A. I think during, nearly during the whole day. A great many negroes came there and finally went away without voting.

Q. Did you have any conversation with any officers of the police as to what the police were expected to do on that day?

Objected to; overruled.

A. Well, the conversation, I think, to which you allude, took place about two weeks before the election. I was talking with some of the police, one of whom was a

lieutenant. It was about two weeks before the election and I was talking to several policemen, one of whom was a lieutenant.

Q. (By Col. Young.) Who was that officer—give us his name?

A. I think it was Lieutenant Heffernan. I can't swear positively.

Testimony objected to unless witness can give the name of the officer. Objection overruled.

A. I stated at the very outset that I could not be positive as to the name. He was a lieutenant. I am perfectly willing to withdraw the name. I told you I could not swear to the name. We were talking about the approaching election. As I say, it was known that I was a pretty earnest Brown supporter—and I stated that I believed in a fair election—and a fair count, that we would carry the city by a large majority; I believed that Gov. Brown would get a very large vote. They laughed at this, and the officer—the lieutenant—said "Why do you really believe you are going to carry this city?" I said, "I do, most certainly." He said, "What we did to you in the June primary will be nothing to what we will do in the election." I do not whether he had any authority for that statement, or whether it was simply injected into a political talk, and meant nothing.

Q. Whether he was saying it laughingly or not, what he did say was, "What we did to you in the June primary will be nothing to what we will do to you in the election"?

A. That is what he said and I laughed and said, "I do not think you will be that bad."

Q. Do you not recall that you said, you did not think it could be that bad and not that it would be that bad?

A. I did not make it in the form of a threat. I said "I do not think you will be that bad."

Cross-examination by Col. Young:

Q. You spoke of this jocosely to these men?

A. I do not think I was speaking jocosely when I was speaking about the fact when I said we would carry the city.

Q. When you said that did not they laugh and make that remark in a joking way?

A. I don't know. After he said that, I said in a joking way, "I do not think it will be that bad."

Q. I will ask you if you were really in earnest when you said to these gentlemen two weeks before the election that you thought Brown would carry Louisville?

A. I was.

Q. You believed that?

A. Yes, sir; I did. I believed he would have carried Louisville in a fair vote and a fair count if it had not been for certain things that took place just before the election that made a number of men who would have voted for Brown turn about and vote for Mr. Taylor.

Q. You spoke of the colored vote of the third precinct on Eighth street?

A. Yes, sir—the third precinct of the eight ward, on Sixth Street, between Walnut and Chestnut.

Q. You say there are a good many negroes there?

A. A large number of negroes.

Q. Were there a large number of negroes, do not "all coons look more or less alike to you"?

A. I confess that, although I was raised among them, I can not tell one negro from another, where there are a large number of strange ones.

Q. I asked you if there was anything unreasonable in requiring, any ward or precinct where there are a large number of negroes ,and where they have got nothing simply but their residence—it was an unjust precaution to ask for identication?

A. If you are asking for a legal opinion, I would like to have a fee.

Q. Well, I will—I will give you five dollars.

A. I will say, Colonel, that it is an unreasonable provision to require the colored men to have two white witnesses of their precinct to identify them.

Q. I simply asked if you thought it was unreasonable to require identification?

A. I will say in every election where a man's vote is challenged on the ground that he is not a resident at the place at which he is registered—does not reside in the precinct—the remedy is to challenge his vote and to swear him—make him swear to his residence, and if it is found afterwards that he is telling a lie to prosecute him.

Q. Did you ever act as an election officer?

A. I have not for years.

Q. Have you been an election officer since the new registration law?

A. Not under the new registration law; I acted under the Wallace registration law.

Q. You know that about one-fourth of the votes in Louisville are negro votes?

A. Yes, sir.

Q. About 11,00 out of 44,000?

A. Yes, sir.

Q. I will ask you to tell this committee under these circumstances and where there is a heated contest, how it was an unreasonable provision to require identification of these negroes before voting?

A. I do not go so far as to say it was unreasonable to require of them identification. I do say that one negro out of three entitled to vote would be unable to prove his residence by two white persons of the precinct.

Q. The precinct in Louisville contain how many votes?

A. They are supposed to contain about 200.

Q At this precinct you say they were about half whites and about half negroes?

A. Yes, sir; the whites residing at one part of the precinct and the negroes at another.

Q. In this particular place is the city populated thickly or not?

A. Yes, sir.

Q. So that a precinct in that locality would not exceed four squares in extent, and probably less?

A. I think less than that.

Q It would be no great hardship or difficulty for him to get men within four squares of the polls? He could operate two squares in each direction, supposing the polls to be in the center?

A. If he could find two white voters who knew him it would not be difficult. It would depend on how long he lived there, and how many people he knew. I know a number of negroes in the city, but I do not know where they reside and could not swear to it.

Q. A man would have to go at the most in order to identify one of these negroes about 800 feet?

A. If he could get a man to identify him he would not have to go far.

Q. Did you take any part in that Board of Trade meeting?

A. No, sir; I think you and I were both in court trying a murder case.

Q. You were not called; were you invited?

A. No, sir.

Q. You do not live on Main street?

A. No, sir.

Re-examination by Col. Breckinridge:

Q. Identification by two white voters of the precinct, when the precinct is a regular precinct, would be nearly impossible, if the negroes had to get white voters who had

gone to their business in other parts of the city, in time to vote during that election day, would it not?

A. That would be one of the difficulties; and another difficulty would be that the negro voters and the white voters in the same precinct, do not occupy the same immediate neighborhood. The white voters live upon more reputable streets and would not as a general rule know where the negro voters lived.

Re-cross examination by Mr. James:

Q. I will ask you if the object of requiring these witnesses to identify the negroes at the polls is not, that you want to keep the darkies from voting in one precinct, and then going to another, and repeating under false names, at the election?

A. I have no doubt that would be part of the object to prevent the darkies from repeating.

Q. Is it not true that with every precaution of that sort that repeaters are registered in the different precincts and wards of the city—having one name in one precinct and another name in another, and that they vote twice under these names?

A. Mr. James, we have had that difficulty, but I have never heard of a case, where if the man is suspected of being a repeater he could not be sworn and afterwards arrested if it found that he has sworn falsely. The darkies are not the only ones who repeat.

Q. I will ask you if there is not more opportunity for the darkies to repeat than for white men?

A. On the theory that all coons look alike, I suppose it is.

Q. And on the further theory that they are transient people living here to-day and there to-morrow?

A. There are a large number of negroes in the city that frequently move, there is no difficulty [illegible] one who has lived a long time in his precinct.

Re-examination by Col. Breckinridge:

Q. And do you not know that another object of it was to delay the voting, and prevent the voters from voting?

Objected to; sustained.

Milton Bronner, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. What is your name?

A. Milton Bronner.

Q. Where do you reside?

A. Louisville.

Q. What is your occupation?

A. Reporter.

Q. For what paper?

A. Louisville News.

Q. Louisville News?

A. Yes, sir.

Q. That is an afternoon daily?

A. Yes, sir.

Q. How long have you lived in Louisville, Mr. Bronner?

A. All my life, with the exception of three years that I was at the University of Virginia.

Q. How long have you been a reporter?

A. About four years and a half.

Q. On what other paper besides the News?

A. Previous to the publication of the News I was on the Commercial.

Q. Were you in Louisville as a reporter before this election?

A. Yes, sir.

Q. Did you see Gov. Bradley in Louisville about the time of the election?

A. I saw Gov. Bradley on election day.

Q. Where?

A. The newspapers on that day, owing to the excitement, tried to cover all the important points, and in the afternoon I was sent to the Galt House to see Gov. Bradley, and, if possible, stay in his room in the afternoon so as to get a line on the orders he might issue.

Q. Well, what occurred?

A. Shortly after four o'clock, just as the polls had closed, Finley Bush and a young attorney named Jarvis, I don't know his first name, came in, very much excited, and stated that at one of the precincts of the fifth ward on the north side of Market street, between First and Brook, the Brown inspector had been refused admittance. One of them, I don't know which, wanted to know if the governor could not send the militia. Gov. Bradley impatiently said: "My dear sirs, you are asking me to do the very thing for which you have been denouncing Mayor Weaver; you have been saying that he wants to take possession of the polls with the police and the firemen, and you now want me to go out and take possession of this precinct with the militia."

Objected to.

A. Then, after the governor had stated this, one of the men said that this was an injunction; that these inspectors had presented the injunction of Judge Toney, which had been turned down by the police. Gov. Bradley said that he could not take any official cognizance of what they had said to him. While he stated he didn't doubt their veracity, as the chief civil executive of the state, the only person to whom he could pay attention was Toney himself; that if Toney wrote him a letter stating that the civil authorities of the county and city could not enforce his injunction, then it was his duty to act, but otherwise he could not, and with that the incident closed.

Q. Were you present at any other time?

A. I was there for the rest of the afternoon, but there was nothing for my paper, and so I left.

Cross-examined by Col. Young:

Q. When was that conversation with the governor?

A. That was on the afternoon of the election, shortly after the polls closed.

Q. Did the governor require of these gentlemen any affidavits as to these facts?

A. No, sir.

Q. Did he tell them that Toney was the man to see?

A. He told them that he could no nothing for them, as I have just stated.

Q. Didn't he tell them that Toney was the only man he could listen to, or words to that effect?

A. These men had asked him—

Q. Answer that question, whether he did, or did not. Didn't he tell them that Toney was the only man he would listen to in a matter of that sort?

A. He told them that he could take no official cognizance of what private citizens told him—yes, sir.

Q. Didn't he tell these gentlemen that Judge Toney was the only man that he would hear on this point?

A. Yes, sir.

Q. And that Toney must speak?

A. Now, he didn't tell them that Toney must speak.

Q. Well, give us his language; what did he say?

A. He didn't say anything about that. He said he could not pay any attention to private citizens.

Q. Didn't he use Toney's name?

A. Yes, sir; he used Toney's name.

Q. Tell us how he used it?

A. He stated, that the only time in which he, as chief executive of the state, could use the militia, would be for

the judge who issued the injunction to write him a letter stating that his injunction would not be enforced, and could not be enforced by the authorites of the city and county.

Q. And these gentlemen then immediately left, did they?

A. They left Gov. Bradley and then the incident closed.

Q. Did they say they would return?

A. No, sir; they din't. I don't recollect them saying anything about returning.

Q. Now, he did mention the name of Judge Toney in that conversation?

A. Yes, sir.

Re-direct examination by Col. Breckinridge:

Q. Before he mentioned Judge Toney's name, it was these gentlemen, was it not, that mentioned Judge Toney's name?

A. Yes, sir; they were the ones that first mentioned his name in the conversation.

Q. Do you recall in that conversation whether he said anything about preserving the peace—Gov. Bradley?

Objected to; sustained, and exception.

Irvine Cobb, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live, and what is your business?

A. Well, sir, my place of residence—I hold my vote at Paducah, Ky. I now live in Louisville, Ky.

Q. How long have you lived there?

A. A little more than a year. I am a reporter on the Louisville Post by occupation?

Q. You are on the Louisville Post?

A. Yes, sir.

Q. What do you know, if anything, about the character of the men selected to act as special police upon the day of the election by the Board of Safety, and upon what do you base that opinion or knowledge.

Objected to, and overruled.

A. Well, I was detailed to go and see these men sworn in. I did go, and was there when they assembled and were sworn in. I saw them, mixed with them, and heard them talk. My opinion is, and my belief is, and my knowledge is—

Objected to.

By the Chairman: Tell what you know about it, Mr. Cobb.

A. Well, they were men—a great majority of them were men of disreputable character—not all of them but a great many of them.

Q. Now, how did you gain that knowledge of them—by their appearance, their conversation?

A. Yes, sir; by their appearance, and by their conversation.

Objected to.

Q. What about their conversation; what did that lead you to believe or think?

Objected to.

Q. What was their conversation, and we will let the Board form its opinion from that?

Objected to.

By the Chairman: I believe that the witness would have to know the men personally before his testimony as to their character would be competent.

Q. Do you know in what part of the city they resided?

A. Well, if the list of names furnished the Board of Safety and on which these men were sworn to, is true, they resided in the most disreputable portion of Louisville.

Q. Where?

Objected to.

A. Green street.

By the Chairman: Unless the witness knows the people personally, any testimony as to their character would be incompetent.

Q. Mr. Cobb, did you ever hear any statement from any of the police officers, or police of Louisville, about what part they expected to take in the election, and prior to the election?

A. Yes.

Q. Now, what was that conversation, and with whom?

A. It was with Capt. John Tuley, or Tully, I think; he is Assistant Chief, I think—I know he is an official of the Louisville Fire Department.

Q. Who else, Mr. Cobb?

A. Well, I don't think I can specify any others by name. There were other conversations, but I don't think I can give any other names.

Q. Now, what did he say?

A. He said that members of the Fire Department didn't like to take part in elections, didn't like to have to; that if the Fire Department was divorced from politics

they would all attend to their own business on election day, but since a man, in order to hold his job in the Fire Department, he would have to take a hand in politics. He said the firemen didn't want to take any part in this election, but that a man, in order to hold his job, had to take a part in it. The question under discussion was this coming election—November election.

Q. Now, Mr. Cobb, do you know anything about any assessment being made upon the members of the Police or Fire Department, by which a fund would be raised to assist in the Goebel campaign?

A. I saw a card which I learned or was told was given out—one of the cards of a number that were given out to the police officials, police officers, and police also, that the contributions which this card called for—

Objected to.

Q. Did you see the card, Mr. Cobb?

A. Yes, sir.

Q. Have you it in your possession now?

A. No, sir.

Q. What was it?

Objected to, sustained and exception.

Q. Mr. Cobb, by whom was it addressed—to whom was it addressed, and by whom was it signed?

A. It was not signed by anybody, and not addressed to anybody.

Q. What was it?

Objected to, sustained and exception.

Q. Mr. Cobb, did you ever hear any of the police officers, or policemen, or officers or members of the Fire Department say that they had been assessed for this purpose?

Objected to.

By the Chairman: If he can identify the officer, let him answer.

A. I could not identify any officer.

Q. Now, Mr. Cobb, what was the state of the public mind in Louisville immediately preceding the November election?

A. Very much disturbed.

Q. Do you know what brought that about?

A. Well, the political condition prevalent there.

Q. You stated that you had lived there a year; what had been your business all the time you were there?

A. Reporter for the paper.

Q. State whether or not in performing the duties of your business, you were called into all the different parts of the city.

A. In many different parts—not all, but particularly to the City Hall, where one hears a good deal of politics.

Q. Now, Mr. Cobb, state whether or not, in your opinion, the calling out of the militia, or rather the placing of the militia in the armory on the day of the election on the part of the Governor, was a wise or unwise movement, and if you answer that it was a wise movement, state upon what facts you base that opinion.

A. You want my individual opinion, sir?

Q. Yes, sir; your individual opinion.

A. I think it was, in my humble judgment, a wise movement, because it led the people to believe that the police and fire department and other city employes, and employes of branches of municipal government, would not run the election—would not dominate the election and perpetrate frauds.

Q. State whether or not, in your opinion, the calling out or placing of the militia in the armory was necessary for the preservation of peace.

Objected to.

A. I don't know whether it was necessary or not, sir.

Cross-examined by Mr. Scott:

Q. What is your age?

A. 24.

Q. How long have you been in the newspaper business?

A. Nearly seven years.

Q. How long in Louisville?

A. Since the 1st day of January, 1898—1899.

Q. Now, whereabouts was this policeman that you say you talked to?

A. I didn't mention talking to a policeman.

Q. I thought you did—Tully?

A. No, sir; he is a fireman.

Q. Whereabouts is he?

A. It was in the City Hall.

Q. Whereabouts in the City Hall?

A. In the public office of the Board of Safety; it has two offices, an inner office and a larger office; it was in the larger office—reception room.

Q. What day was it?

A. I can't name the exact day.

Q. Anybody present?

A. Yes, sir; several people were present.

Q. You were over there then hunting up news?

A. Yes, sir.

Q. Did you publish that fact?

A. No, sir.

Q. You did not?

Q. And you say you represented the Evening Post?

A. Yes, sir.

Q. It was publishing everything derogatory to the Democratic candidates, wasn't it?

A. I don't know whether it was or not, sir.

Q. Wasn't it waging a bitter newspaper war on the Democratic ticket.

A. It was waging a right considerable war on the Goebel Democratic ticket. It wasn't saying anything bad particularly about the Brown Democratic ticket.

Q. You were on the hunt for that sort of news, wasn't you?

A. I was on the hunt for all kinds of news.

Q. Especially about the City Hall and that kind of news?

A. Yes, sir; especially City Hall news.

Q. Now, if that was true, why didn't you publish it?

A. There are a great many things we hear we don't publish.

Q. Did you ever hear anything derogatory to that ticket that you didn't publish, before—do you remember anything else?

A. Yes, sir; I heard some things, quite a number—a great number.

Q. Well, you say the public mind was disturbed?

A. I think it was—yes, sir.

Q. Wasn't it your business, and your express business, to disturb it as much as you could, by writing the reports you did, and the articles you did?

A. I supposed such an humble, common reporter was not capable of disturbing the mind of the city of Louisville—single handed, anyhow.

Q. You never threw any firebrands, did you?

A. No, sir; not that I remember of.

Q. Your paper, you say, when engaged in making warfare on Mr. Goebel and his ticket?

A. No, sir; I did not.

Q. I thought you said it was against the Democratic ticket?

A. It was opposing the Democratic ticket.

Q. And doing everything that was calculated to hurt it, wasn't it?

A. No, sir; not everything, I don't suppose, but a great many things, and it seems it did hurt them.

Q. Could you fix the date anymore nearer than you have, of the conversation with this fireman?

A. No, sir; further than to say it was before—shortly before the election on November 7th; I won't say specifically.

Q. Can you say within a week?

A. I will say before, and not very long before.

Q. What time of day; can you fix the time of day?

A. Yes, sir; it was between nine and eleven o'clock in the morning.

Q. And nobody present?

A. Oh, yes, there were several present.

Q. Can you give their names?

A. No, sir.

Q. Why can't you?

A. Because there were people passing in and out of that office all the time; I remember that somebody was in the office all the time that any conversation was going on there, and I could possibly name some people who had been in the office, but whether they were there when this particular bit of conversation came up, I could not say.

Q. How did he came to tell you that; was he talking to you?

A. Yes, sir.

Q. How did he come to tell you that?

A. I was never able to understand.

Q. What led up to it?

A. We were discussing the action that the police and firemen had taken in previous political metings during that year.

Q. Were you abusing them for it?

A. No, sir.

Q. Well, who began the discussion of that; you or he?

A. Well, it came up generally, I think—it came up between us.

Q. Somebody had to bring it up; who brought it up?

A. I don't remember.

Q. You can't say?

A. No, sir.

Q. Can you say you didn't?

A. No, sir.

Q. No impression about that?

A. No, sir; further than it came up as conversations often do—just one thing leads to another.

Q. Now, what led to that?

A. As I say, the part which the police and the firemen had taken in previous political meetings, primaries, and mass conventions, and the State Convention at Music Hall.

Q. Now, did he say they had taken a part in those things heretofore?

A. No, sir; I knew it.

Q. You knew it?

A. Yes, sir.

Q. I say, did he say so?

A. It was entirely unnecessary for him to say so.

Q. It is probable then that you said it?

A. I didn't say I said it. I said I knew it.

Q. I am talking about the origin of that conversation?

A. Yes, sir.

Q. Can you say that he said that the firemen and police had taken charge of other elections, or had engaged in other elections?

A. No, sir. I can not trace exactly the course of that conversation, and the words that led up to his remark. I will say that the subject under discussion was elections—politics in Louisville, and particularly the preceding political matters in Louisville, because those were the only ones that I had any personal knowledge of, and could therefore speak about.

Q. And he said in order to hold his job, a fireman had to take part in politics?

A. In effect, that is what he said.

Q. Well, did he say he was going to take any part?

A. I don't think he used the pronoun "I"; he spoke as a fireman of firemen.

Q. You have been the Post correspondent here?

A. Yes, sir.

Q. Did you write the telegram from Frankfort yesterday, saying that Frankfort was on the verge of a revolution, and a hundred thousand men were coming here?

A. I think that must have been an exaggeration of about 88,000, sir. I didn't say that a hundred thousand armed men were coming here.

Q. Did you write the article?

A. Was there an article in the Evening Post yesterday saying a hundred thousand men were coming here?

Q. I understand it was last week that you said Frankfort was on the verge of a revolution, and a hundred thousand armed men were coming here?

Objected to.

Q. The question is, did you write that article?

Objected to and sustained.

Re-direct examination by Mr. Sweeny:

Q. I will ask you, Mr. Cobb, if newspaper correspondents don't write a good many things to their newspapers that they would not be willing to swear to?

A. I am afraid they do.

Q. Now, I want to ask you this additional question. Mr. Scott asked you why it was that you didn't publish the conversation that you had with this fireman. I will ask you if you don't know that your paper, the Louisville Post, has information in its possession in regard to the actions of a certain distinguished gentleman in connecnection with the poll-books of Nelson County, which has never been published to the world?

Objected to and sustained.

Counsel for contestant moves to strike out the question, and said motion was sustained, and the question ordered stricken out.

Dr. T. D. Smith, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. What is your name?

A. D. T. Smith.

Q. What is your occupation?

A. Physician.

Q. Where do you reside?

A. Louisville.

Q. How long have you resided there?

A. Well, about fourteen years, since my last return there.

Q. What is your political affiliation?

A. I have always registered as a Democrat—been very active in the Free Silver cause—supported the Bryan party in the last race.

Q. You were, if I may ask such a question, what sort of a Democrat in 1896?

A. Free Silver Bryan Democrat, Chicago Platform.

Q. Doctor, were you in Louisville at the last election?

A. I was.

Q. That was November 7th?

A. I was.

Q. Were you at any one of the polls in Louisville that day.

A. I was at a number of them. In the first place, I was in charge of the 16th Precinct of the 5th Ward. I stayed there until afternoon, and then I left and visited other precincts, and the Court House.

Q. Were you a member of what was known as the Honest Election League?

A. I was one of the organizers. I was a member of the Executive Committee, and I attended every meeting of the Executive Committee.

Q. Doctor, there has been some questions asked, maybe you can satisfy the gentlemen on that, as to the branch offices of the Honest Election League?

A. Yes, sir; we had a branch office for every Legislative District except two branch offices, which met in the headquarters at Fifth and Main.

Q. Where were those branch offices located, if you recollect?

A. The exact numbers I could not give, nor even the streets. One of them was on Jefferson, I will say in the neighborhood of 24th; another was on Magazine in the neighborhood of 19th; another was on Broadway, I think, about Clay; another was on Gray and Floyd, I think about that; and another was on Market above Shelby.

Q. Do you mean to be understood, Doctor, that it was the purpose of the Honest Election League to have a branch office in every Legislative District in the city of Louisville?

A. Yes, sir.

Q. Two of those offices, however, being at the central office, were they?

A. Yes, sir.

Q. Which was in what building?

A. It was in a bank building at the corner of Fifth and Main.

Q. Fifth and Main?

A. Yes, sir.

Q. Doctor, will you just say to the Board, in your own way, without my taking up your time to examine you, what occurred, within your own observation, on election day in Louisville?

A. In the first place, the polls were opened somewhat late at the precinct at which I was stationed. Then the voting began, and there was a great deal of delay; at one time, at least, there were two columns formed, and the negroes were kept back. We complained of that, and that was remedied. I timed one vote, that I thought took fifteen minutes; a great many of them I thought took as much as ten minutes. The negroes had been registered--were registered from Pearl street, the lower part of Linden. At first they would tell them they were from Linden, that is, so they told us when they came back from the polls.

Objected to.

Q. Just tell, Doctor, what came under your observation?

A. They went up to vote and could not vote; and I don't know how many of them, but a great number were

turned back and after making efforts, I went down myself to make inquiries, went down to headquarters and saw the lawyers—we sent others to the judges, but they finally got discouraged, and quite a number went away, I don't know how many, and didn't vote, before I arrived —went back and left the polls in discouragement. In the evening I was down in Helm Bruce's office just about half an hour before the polls closed. He asked me if I would take a gentleman with me, Mr. Ogle, both being qualified as special deputies—were sworn in over at the Court House by order of Judge Barker, I believe, and serve Judge Toney's commission on two of the first precincts in every ward in the city—two of the northern precincts. We started out and served on several, and finally reached Clay and Main.

Q. When you say two precincts, or two wards, do you mean?

A. Two precincts in each ward; we reached Clay and Main—in fact, I skipped some, because I was told there was a riot at Clay and Main. I hurried on up to Clay and Main.

Counsel for contestant objects to what the witness heard.

A. On reaching there I found a riotous gang of men drinking, and I got out and went up to the door, out of which they had knocked some glass. I knocked at the door and could not get in, and then I called to the men on the inside—the room seemed full of them, and commenced reading the injunction—had gotten nearly through and was hunting up the names of the officers at that precinct. I was pushed away from the door three or four times, and two policemen were standing there, Mr. James Kinnarney and Mr. Henry Oliges, I believe. I demanded that they should protect me. The crowd snatched my papers and tore them up. I went back to the buggy and got another supply. I went back to the door again, and they snatched my papers again, and I again called on the police for protection. They said they had nothing to do with it. I was struck on the back of the head by the man by the name of Slusher, whose business is a prize fighter.

Thereupon the Board adjourned until Friday, January 26th, 1900, to two o'clock p. m.

Frankfort, Ky., January 26, 1900.

The Board met pursuant to adjournment.

Dr. D. T. Smith's direct examination was resumed by Mr. Breckinridge as follows:

Q. When we adjourned yesterday, you were about to give testimony concerning another visit to another precinct than the one to which you had been refused admittance and about which you spoke. Will you give to the Board what you saw did at that second precinct, what the number of the precinct was, and what happened?

A. I went next to Clay and Main, the first precinct, I think, of the Third Ward. At least it is the one next to the river. I found a large crowd there, among them eight or ten policemen. The policemen told me that the polls was not at that place, that I would find the poll—it was then getting dark— about a block and a half away, showed me a light. I went to the light and found it a tailor shop and came back again. I found a boy who took me to the door of the polling place, which was close by where they were standing, and there I met a young man, Thomas Ryan, the Republican Inspector of the precinct. He told me in Hendrick's presence—

Objected to.

A. The Republican inspector, when I went up to the door to seek admittance, the Republican inspector started to walk up with me, and Mr. Hendrick, one of the policemen, pushed him back off of the pavement away from the voting place. I failed to get in and telephoned back—to know whether I had a right to break in—to the headquarters. Mr. Helm Bruce advised me then I had better come home.

Q. Was this man who you say was Mr. Hendricks, was he a police officer?

A. Mr. Hendricks was a police officer.

Q. Who was the man that he prevented—that he pushed away?

A. His name was Thomas Ryan, sir, Republican inspector at that precinct.

Cross-examined by Mr. McQuown:

Q. You say you are one of the charter members of the Honest Election League?

A. It is not chartered—one of the original members—one of the first signers of the organization.

Q. When was that organized?

A. It was organized, I think, about five weeks before the election, I am not right sure.

Q. Who were the other gentlemen that organized it?

A. All of them I couldn't recall without the list.

Q. Who were the leaders of it that united with you in the organization?

A. The leaders were Mr. Robert Cochran, Mr. Arthur Wallace, Mr. E. L. McDonald were the first movers that I knew of in the measure.

Q. When and where was the first meeting of the members of that League held?

A. The first meeting was first and advisory meeting, which I did not attend. The first meeting was held in the Louisville Hotel, in the Ladies' Parlor, I believe they call it, in one of the upper rooms.

Q. Who was present at that meeting?

A. I can't recall all.

Q. As many as you can?

A. There was Mr. Robert Cochran, Mr. Humphrie, Mr. Kenneth McDonald, Mr. Arthur Wallace, Dr. P. G. Trunnel, Dr. R. W. Taylor.

Q. Mr. James P. Helm there?

A. Mr. James P. Helm was there, and Judge Bruce was there.

Q. Genl. Duke?

A. Genl. Duke was there, yes, sir.

Q. John Stites?

A. John Stites was there.

Q. Richard W. Knott, the editor of the Post?

A. Richard Knott.

Q. Editor of the Post?

A. Yes, sir.

Q. John Whallen?

A. No, sir; I think not.

Q. When and where was the next meeting held?

A. The next meeting was held in the same place.

Q. Did you ever move from there?

A. Yes, sir.

Q. Where did you establish a permanent headquarquarters?

A. In an old—former bank building at the corner of Main and Fifth.

Q. The headquarters remained there?

A. The headquarters remained there, yes, sir.

Q. You say that at the various places which you have designated there was also a branch office?

A. Yes, sir.

Q. Was any person put in charge of those offices to remain there all the time?

A. A secretary was put in charge of each one of those offices.

Q. Had telephone communication?

A. Yes, sir.

Q. With the main office?

A. With the main office through the general exchange only.

Q. How many of those meetings of the Honest Election League did John Whallen attend?

A. I never saw him at one of them.

Q. He was a member of the League?

A. I don't know.

Q. There was one of those offices in each legislative district?

A. One in each legislative district except the Seventh and Eighth Ward, I believe they had their offices for the seventh and eighth, for two of them, at the—

Q. Who was the treasurer of the Honest Election League?

A. Mr. John—no, I believe Norton was.

Q. George C. Norton?

A. I think so, but I am not positive.

Q. How much money was raised for the purpose of the Honest Election League?

A. I don't know, but I think something like three thousand dollars, I have no certain knowledge how much.

Q. Didn't Mr. Stites raise $5,000.00 himself?

A. I don't know. I really never saw the books. I don't know how much was raised.

Q. You don't know how much?

A. I don't know positively how much.

Q. Room 405 in the Equitable Building on the corner of Fourth and Jefferson, was that used also in connection with the Honest Election League?

A. No, sir; we had nothing to do with that whatever.

Q. Were you ever in that room?

A. Often.

Q. What was it used for?

A. Used for the Brown headquarters.

Q. Who was in charge of that?

A. Mr. McChord was in charge—that is Mr. McChord was in control; there was, I believe, a young man by the name of Quarrier, and another whose name I have forgotten, although I have often met them.

Q. Mr. Quarrier was a member of the Honest Election League, I believe, was he not?

A. I don't know, I would presume so.

Q. He is Vice-President of the L. & N. Railroad, isn't he?

A. No, sir, a young man he was.

Q. He is a son of that—

A. I don't know.

Q. Which McChord was it that you say had charge of the room 405?

A. I have forgotten his initials.

Q. Where did he reside?

A. He resided at Lebanon, I think.

Q. Isn't it Springfield instead of Lebanon?

By Mr. Sweeny: His residence is Springfield.

A. Springfield.

Q. He is an attorney there for the L. & N. Railroad, is he not?

A. I don't know.

Q. What is the name of that young man Quarrier—what is his given name?

A. I don't know his given name. I got to know him in going there to see Mr. McChord.

Q. Do you know Cushman Quarrier?

A. The Vice-President of the Railroad Co?

Q. The Vice-President of the L. & N.

A. Thirty years ago I knew him, but I haven't seen him for thirty years.

Q. You don't know whether this young man is a son of his or not?

A. I do not.

Q. On election day where did you say you went?

A. I went to the Sixteenth Precinct—I had charge—

Q. Sixteenth Precinct of what ward?

A. I volunteered to take charge of the Sixteenth Precinct of the Fifth Ward.

Q. Who accompanied you to that place?

A. Nobody accompanied me.

Q. How did you happen to go there?

A. In the meetings—in the Executive Board meetings of the Honest Election League, the question was brought up, and I told them as my health was bad I would be glad if they would put me at that ward which I intended to be Floyd and Linden—Floyd and Pearl street, yes, Floyd and Pearl, but I named the wrong precinct and was sent to that point.

Q. Sixteenth of the Fifth Ward?

A. Yes, sir.

Q. Did you go there?

A. I did go there.

Q. Who went with you?

A. Nobody.

Q. Who did you find there?

A. I went alone, and the men whom I had spoken to, Mr. Meriwether and Mr. Ramser, came later—Mr. Ramser came later, Mr. Meriwether did not come, and I found a considerable number, I found five or six young men when I went back the second time.

Q. Were they Honest Election Leaguers?

A. I believe they all were.

Q. How long did you remain at that precinct?

A. I remained at that precinct—I went home to vote; I went to my own precinct at home to vote. I then went back to the precinct. I was gone about an hour, and I think I finally left about two or half past two, maybe a little earlier.

Q. Where is your precinct that you vote in?

A. It is on Brook street between Gray and Chestnut.

Q. How far is that from the precinct, Sixteenth Precinct of the Fifth Ward?

A. It is about six squares.

Q. What occurred at this precinct of the Fifth Ward?

A. A delay of voting and refusal to allow men to vote—colored men, was what I saw there.

Q. Do you know anything of your own knowledege of the cause of it, were you in the booth when it occurred, or the voting place?

A. No, sir; I was not.

Q. You know nothing of any cause for this delay?

A. I went once by permission to the polling place, went to talk to the officer.

Q. By whose permission?

A. By the permission of the sheriff, of the officers who came out. The voting had been stopped and I walked up to the door and talked to them as others were doing.

Q. How long did you stay there at the door?

A. A minute, I suppose.

Q. Did you go back then beyond the fifty foot line?

A. Yes, sir, maybe two minutes.

Q. So you know nothing of your own knowledge as to anything that transpired inside or what was the cause of this delay?

A. No, sir.

Q. Where was the other precinct that you went to that day?

A. The other precincts they were—I went to several of them.

Q. Those that you spoke of here last night?

A. One of them was on Jefferson street near Jackson, the other was on Clay, corner of Clay and Main.

Q. Jefferson and Jackson, what occurred there, if you had any experience there, repeat it, let's see what it was?

A. My experience there was that I undertook to read Judge Toney's injunction. In the first place I undertook to get through the door and they wouldn't open it for me, and there had been a glass broken—

Q. Allow me to interrupt you. What time was it that you went to that precinct?

A. I would suppose it was thirty minutes past four—twenty-five minutes past four.

Q. You went up to the house where the polling place was?

A. Yes, sir.

Q. Was the door closed?

A. The door was closed, yes, sir.

Q. What did you do?

A. I tried to get in and they wouldn't open it for me, and there was a glass broken out, I stood by that glass and showed them through the glass my commission and the injunction that Judge Toney had issued, and told them that I was authorized to serve it, and commenced reading it. The crowd gathered up around me.

Q. That is the crowd on the outside?

A. On the outside, and among them were two policemen to whom I appealed to keep the crowd back and then they commenced pushing me away, and I demanded that the policemen protect me in the exercise of my duties, at least protect me against the crowd. They tore up my papers and then I went out and got others from the buggy that was in the street, brought them back, they snatched them, and tore them up again.

Q. Who were those men that tore up your papers?

A. One of them is a man who is now under indictment for—

Q. What is his name?

A. Slusher.

By Judge Yost: Under an indictment?

A. Now under indictment for striking.

Objected to, objection sustained.

Q. You say these people outside tore up your papers?

A. Yes, sir.

Q. Did you have any authority authorizing you to execute that injunction?

A. I had been commissioned in Judge Barker's Court.

Q. By whom?

A. By the clerk, that is by commission authorized by him, and sworn in as special bailiff.

Q. Who swore you in as special bailiff?

A. The Clerk of the court.

Q. What was his name?

A. Mr. Page, I think did it; either he or his deputy; I was sworn in in the court room, Circuit Court room.

Q. Who appointed you as special bailiff?

A. Judge Barker's name was on the commission.

Q. Did you have the commission, you say, from Judge Barker?

A. Yes, sir.

Q. Are you sure of that?

A. That is my clearest recollection.

Q. What did you do with that commission?

A. I handed one to the Grand Jury when I was before it. The other one was torn up. I had a duplicate made when the first one was—

Q. Whose name was signed to the Commission?

A. The Clerk's name, it was by order of Judge Barker.

Q. What was the style of the office which you held?

A. It was a special bailiff to serve this injunction.

Q. And the Clerk you say appointed you?

A. Yes, sir.

Q. Nobody else?

A. And Mr. Ogle was appointed also. His given name I have forgotten.

Q. Mr. Ogle was—

A. Appointed with me.

Q. Appointed by Mr. Page?

A. Yes, sir; I think so, at least.

Q. When you got your second installment of papers you went up and voted again, and what happened then?

A. That is the time they were snatched away from me again by a crowd of men and I was struck by the pugilist.

Q. You undertook to read one of those long printed injunctions of Judge Toney to the crowd?

A. No, sir; I was reading it to the men inside of the door and through the door.

Q. Was there a hole in the door?

A. Yes, sir.

Q. Did you poke your head in the hole?

A. No, sir; I reached it through with my arms.

Q. You had the injunction inside and you were outside, is that the way?

A. Not when I was reading it, but I showed them I had it, I called their attention to it.

Q. It was one of those long printed injunctions with about a thousand names on it?

A. I don't know how many names, but it was one of those long printed injunctions.

Q. How far did you get before they tore the first one from you?

A. I was pretty well through.

Q. Read all of those names?

A. No, sir. When I got to that poll I looked to find the precinct at which I was to read their names. While I was looking for that, for the names of the officers at that precinct, the papers were snatched.

Q. While you were looking for them?

A. Yes, sir.

Q. The men that snatched it are these men that you have referred to, Mr. Slusher and somebody else, you say?

A. I believe a half dozen were engaged in it. And front—among them were two policemen who did not snatch but did not hinder.

Q. Were you armed on that occasion?

A. I was not.

Q. Did you have a fight with them there?

A. No, sir.

Q. What did you do when they took the other papers?

A. When Slusher struck me somebody said, "Don't you hit that old man," my spectacles were knocked off and I stooped down and picked my spectacles up. I then told them, "I will be back again to see you," and I went to the telephone, called for assistance, and they told me to come back, and I went back and waited until police came.

Q. How many copies of the injunction did you have in the buggy?

A. I have forgotten the number, but intended to have two for each ward. I think we intended to have twenty-four, intended to serve twenty-four.

Q. How many did you serve?

A. I served six or eight.

Q. Did you count that a service that you made there at the Sixteenth precinct of the Fifth ward?

A. I didn't get there with that, and when I got back they told me that the Brown inspectors were already in, and there wasn't any trouble about it, and more than that they told me, that Doctor Miller had struck me and that he had been arrested, when in fact Dr. Miller was not there.

Q. The whole thing had been accomplished before you got there?

A. They told me so. I learned it was not.

Q. Including the arrest of the man who had struck you?

A. No, sir; he is not arrested yet.

Q. Did you have him indicted?

A. Yes, sir.

Q. He has never been arrested?

A. No, sir; he is running at large yet in Louisville.

Q. Did you have any further trouble—did you serve any other papers?

A. Yes, sir; I went to Clay and Main to serve but I couldn't get in.

Q. What time did you get there?

A. I got there well, I would have to guess, from the time it took me, but I suppose it was getting then towards half past five. I had to send back and get another commission, and I suppose it was half past five when I got to Clay and Main.

Q. Who did you send back to get that second commission?

A. Mr. Ogle went back, my associate.

Q. Did he bring you another one in writing?

A. No, sir.

Q. With John H. Page's name signed to it as Clerk?

A. I think so, I am sure, either by deputy or himself. It was from the Clerk's office.

Q. Were you empowered and commissioned by that commission from Mr. Page as a bailiff at large for the whole city, or were you simply limited to any particular district or locality?

A. For the whole city.

Q. You were made a general bailiff for the whole city?

A. Yes, sir; to serve the injunction.

Q. You only tried to serve at that one precinct?

A. Oh, yes, two precincts in every ward.

Q. Did you go to the other?

A. No, sir.

Q. Didn't go to any other?

A. No, sir.

Q. Why didn't you go to the other?

A. It was getting late, I was getting along slowly, and I telephoned back to know whether I had a right to break in at Clay and Main; they refused to let me in, and Mr. Helm Bruce telephoned me I had better come home, that the resistance was going on all over the city, and to give it up

Q. You didn't break in?

A. No, sir, I didn't break in.

Q. You didn't know those officers up there, did you?

A. No, sir.

Q. They didn't know you?

A. No, sir.

Q. You live in a different precinct, and didn't vote there?

A. No, sir.

Q. And they simply declined to let you in?

A. Well, I know they declined to let me in.

Q. Did you have any uniform on, any badge, or insignia of office of any kind?

A. No, sir, nothing but the certified commission from the clerk.

Q. And that injunction had about six or seven hundred names on it, didn't it?

A. I would have to guess at the number of names; it had a great many.

Q. Do you practice your profession now, doctor?

A. Yes, sir, to a limited extent, my health has been bad and I have been on the invalid list.

Q. What is your other occupation, if you have any other now?

A. That is all.

Q. Are you one of the editorial writers of the Dispatch?

A. Yes, sir, I have been.

Q. How long have you been engaged in that?

A. I have been, I am doing less now than I did at the start; I have been specially writing the free silver editorials and free silver communications in the Dispatch.

Q. How long have you been in that?

A. From the beginning.

Q. From the beginning of the paper?

A. Yes, sir, I was on the first committee that instituted the Dispatch.

Re-direct examination by Mr. Breckinridge:

Q. Did I understand you to say that you were appointed by the Clerk of the Court or appointed under an order of Judge Barker?

A. Yes, sir.

Q. Which was it, do you mean?

A. Under an order of Judge Barker's; the Clerk gave me my credentials.

Sterling B. Toney, being duly sworn and examined by Judge Yost, deposed as follows:

Q. In the Courier-Journal of this morning I see it stated that you had been arrested for refusing to testify before this Board. May I ask you to explain that matter to the Board fully?

A. I will state to the Board that that statement is in consonance with many other statements in that journal concerning myself, wholly untrue.

Q. I will ask you to file with the Board your reasons and the different orders given by you in the injunctions about which I will ask you later in this examination?

A. I will state to the Board that I received a subpoena upon last Friday evening, I think it was. The following day, Saturday, was a joint session of the Circuit Court of Jefferson County, and it was highly important that I should be there, as I had prepared about fifteen judgments to return, and I telegraphed to Judge Yost to inquire whether or not Monday would be satisfactory, and he answered very kindly that it would. I reflected upon it and concluded that it was hardly consistent with the dignity of a Circuit Court Judge to be summoned before a Legislative committee or any committee, or any tribunal to testify as to his official acts, which were all matters of record, knowing that a Circuit Judge can only speak through his records, and knowing that every order and command by myself had been reduced to writing and was a matter of record; and I had read some in my past life upon that subject—notably in Virginia, where Judge Shackleford had refused to go before a Legislative Committee, and they had threatened to punish him for contempt, but the Judge insisted that if they did he would incarcerate the officers. They sent and served rules upon the committee to answer for contempt. However, gentlemen, I took no such position. I recognized the power of the Board to summon me and my duty to obey its summons; but I thought it was due to the office which I hold by the privilege of the people of that district to put on record a mild protest against being summoned as a Circuit Judge to testify to my official acts, and wrote a letter to the chairman of the Contest Board stating those views, and also accompanied that letter with a certified copy, duly attested by the clerk of the Law and Equity Court, of every order made by me as the Judge of that court on the day of the election and on the day succeeding, and that letter and those orders are in my hands, which

I shall ask permission, as due to the Commonwealth of Kentucky, one of her Circuit Judges, to put on file. I went to my friend Mr. Phelps' office, to see if I could get him to bring them up, but he had gone away. I went over to see my friend Kohn (Aaron) and he had left the city. Some one told me that my brother Joe O'Neal was coming up, and I sought him very promptly and asked him if he would bring my letter to the Board of Contest with every certified order which had been made by me as Judge of that court except two, which were the original bills or petitions in equity in the cases of Taylor against Weaver and then Marshall against Weaver, and knowing that they were already before the Board, having read it in the public prints. In my letter I stated the reason why I did not send those prolonged petitions, saying that those two petitions were already before the Board, but I saw no indication of the other orders made by me being before the Board except upon the testimony of parties who had spoken as to their contents. So I had these made out and my Bro. O'Neal said he would bring them and present them promptly to the gentlemen, the chairmen of the committees; and on Tuesday, I think it was, or Wednesday, perhaps, at about half past twelve, a messenger from his office came into the court—there was a case being tried before a jury—saying there was some one at the telephone desired to speak with me from Frankfort, and I adjourned court unusually early. At one o'clock I adjourned until two. I adjourned from half past twelve to half past one, proceeded down to the telephone, and my Bro. O'Neal spoke to me and stated that he had shown with my permission—he asked me if I would object to his showing the papers to the counsel, my Bro. Yost, and I said, "Certainly not, show them to anybody and everybody; I desire them to be made a part of the history of the case," and he said Judge Yost had said to him that as I had been subpoenaed on the part of the contestants at his instance—his instance or the instance of counsel associated with him—it would be hardly necessary to present them to the Board, as the Board would not consider me in the contumacy of its order if they did not call me, and if it would be satisfactory to let the matter rest in abeyance until he could see me, nothing would be done. I was perfectly satisfied and content to let it stand at that, and knew nothing further until yesterday afternoon I was accosted upon the street by a litfle boy crying out the sale of the Evening Times, "All about Judge Toney's arrest." I suggested to him that I was the original party

and would like to see the paper, and saw my picture and the sensational statement committed to the Associated Press to be read this morning at breakfast, perhaps in San Francisco and Boston and in every city of the Union, that a Circuit Judge was put in the attitude of being in contempt of the highest lawmaking tribunal in the state, and I felt it was due to me at once to come to the city of Frankfort, and would have come last evening, but it was suggested that an officer who was there had said if I would come this morning it would be satisfactory, and with the permission of the gentlemen, the chairmen of the committees, I will put into your possession the letter which I addressed with the certified copies of every order that I made in this case.

Q. Where were you born?

A. In Alabama, 1850.

Q. What have been your political affiliations during your life?

A. Democrat all my life, as well as my grandfather and my father before me, and as I trust my boy will be, coming after me, now at Danville.

Q. For whom did you vote at the November election?

A. Last election?

Q. Yes?

A. The straight Democratic ticket.

Q. Headed by Mr. Goebel?

A. Yes.

Q. Were you a member of the Honest Election League?

A. No, sir; I never attended its meetings, and don't know the vaguest hearsay who were the members. I saw a list of names that were said to be members in a publication where they were denounced as mercenary murderers and marauders. The list was published in the papers.

Q. I ask you whether you would consider it any cloud upon your democracy to have taken steps looking to a fair count of the votes cast at the last election?

Objected to.

A. I was not a member. I desire it shall go down in testimony that the motion for the arrest was made by counsel and not by the gentlemen who have the honor of being chairmen of this committee.

By Mr. McQuown: I would like for you to state which counsel.

By Judge Yost: Counsel for the contestee.

By Mr. McQuown: The witness stated contestants.

A. I meant contestee, if I said contestant.

Objection to the question was overruled.

Q. When did the knowledge first come to you that the mandatory injunction granted by you in the two cases of Brown against Weaver, I believe it was, and Marshall against Weaver would be sought?

A. The morning that I granted the injunction, when Mr. Wm. Smith, the ex-United States District Attorney, and Mr. J. T. O'Neal, came in the court room about ten o'clock to half past.

Q. Now I will ask you to give all the facts in your own way leading up to the granting of that injunction, and the facts connected with its granting, the steps taken by you and by counsel on either side?

A. As you know, the court over which I have the honor to preside has combined jurisdiction, common law and equity. The equitable jurisdiction is for the purpose of affording that branch of remedial justice that is contradistinguished to the remedial justice administered in the courts of common law by injunctions especially—that is one of the chief branches of equity jurisdiction, preventive relief, and whenever a chancellor is applied to upon a bill in equity or a petition setting forth by a sworn bill that irreparable injury will come to the plaintiff unless the injunction is granted, and the further allegations of the petititon show that no possible harm can come to the defendants by granting it, it is an established elementary rule of equity jurisprudence, which I believe every lawyer not only in my hearing but in Kentucky of repute will sanction, that a chancellor when applied to for an injunction, temporary, which can do no possible harm to the defendant, but might result in irreparable injury to the plaintiff if it were not granted, will issue the preliminary injunction until the final hearing upon the motion to make it perpetual. I knew nothing of any bill or the contemplation of any bill or petition in equity to be filed before me. I make that statement not because it has been stated in the grounds of contest, which I read, that the cause of the daily statements in the Courier-Journal and by editorials by Mr. Watterson, that the bill was a matter of preliminary arrangement; by insinuendo, a kind of conspiracy between the judge and the parties, which if true ought to eject any judge from office.

A judge who would allow himself to be approached about a case which was to come before him afterwards upon the bench, ought to be disrobed. I would not allow any lawyer to speak to me about a case which was to be

tried before me before the trial came off, and if he was sufficiently indecent to do so I would rebuke him in such a way that he would not repeat it. I will say to you, in the case on which I acted that I never heard of it before the filing of the petition; had never heard it read, and had never heard any suggestions as to its contents. I will state this, that on the night previous to the election I had a few friends to dinner with me, and about half past seven my door bell rang, and a servant came and said that a gentleman desired to see me. I instructed the servant to excuse me, stating that I was at dinner. The servant returned and said the gentleman wanted to see me but for one minute. I excused myself from my friends and guests at the table and went to the door with my napkin in my hand as an insignia that I was not to be delayed, and I found Mr. Helm Bruce there at the door. He said to me, I am going out home and I thought I would stop by and inquire where you would be to-morrow. I said to him to-morrow is election day, and I am going in to vote, and move around and see the situation, and you may find me either at home or at my club. He says it is likely that we will desire to apply to you for an injunction. Mr. Helm Bruce is a gentleman of high order or character, and he had the decency, as he always will have I imagine in any case, and under all circumstances, not to indicate to me what his petition was, who would be the plaintiffs nor who would be the defendants.

Q. Did he indicate anything at all about its nature?

A. Nothing whatever. He said I see you are at dinner and I will not detain you and he left and I went back to my guests. The next morning after breakfast I put on my overcoat and hat, and was about to start out when the servant up stairs called to me and says, "Judge you are wanted at the court house, over the telephone"—an Irish maid. I said I am going right down to the court house now. I may go by and vote and then I will go down. I went by the polls, which are just a little S. just a square off, but in the general direction of the court house. I voted and went on down to the court house. When I went into the court room I called to my Clerk to furnish me with the order book. I was quite behind in signing the orders then, as I am now, and I thought I would consume a few hours in signing up the orders. I had not started before in came J. T. O'Neil and Mr. William Smith and he said to me—Mr. Smith addressing me, with a bill in his hand—a petition, we desire to make a motion for an injunction. I said, "who are the parties, and what is the nature of your petition." He said, "we desire to

make a motion—ask for a restraining order—a preliminary order, as it is called under our code—a restraining order to restrain and enjoin temporarily the election officers, Weaver the mayor, the board of safety, and the police, from excluding the Brown inspectors, or representatives, whatever they were, from the polls." I said, "Read your bill—let me hear it." And he launched into the reading of the petition. He had not read more than half of the petition before a young brother lawyer standing by—Mr. Baldrick—and by way of parenthesis I will say, I have read his testimony before the Board here, and it is correct in every respect—said he desired to enter an objection to the proceeding until he could get council. I admonished my brother not to interrupt the reading of the petition; I wanted to hear it through. Mr. Smith proceeded to read the petition through. I listened very attentively, and when he finished my brother Baldrick said he would like to hunt up council to oppose this motion—he may have said Mr. Kohn and Mr. Phelps. I said to him, "My brother Baldrick, that is a matter I have maturely considered, that is, whether or not the Brown people are entitled to admission. I have read the statutes on the subject. The papers have discussed it over and over and I have read the statutes thoroughly, and have thoroughly examined Judge Prior's letter to Mr. Breckinridge, and I concur with the views expressed by Judge Prior—a letter which a gentleman of his eminence and character as a lawyer, ex-chief justice—would not write before due consideration; and he states that he also conferred with Mr. Ellis, another lawyer of eminence in this state, and that he concurred; and that these men were entitled to admission." These two were my views also. I said to my brother Baldrick, that no man could change me upon this subject. I am fixed in my opinion—it is my conviction that they are entitled to admission as inspectors, after the election is over. It can do no harm to anyone and it might prejudice the plaintiffs in this case and their sworn petition shows that they may be subjected to irreparable injury. I shall therefore, as the law requires in such cases—a wholly exparta matter in every respect—I said I will grant the injunction; if you have written and prepared it, I will sign it. Mr. Smith presented a written injunction and it was of some length, as are all well drawn injunctions. It is short injunctions which give rise to trouble afterwards. This was very accurately drawn and when they had read it, I says I will sign it. I signed the injunction, and they left. These lawyers, the Clerk, and several bystanders were in the court room at

the time. I got down from the bench, as I usually do and was going towards the door—just leaving; my brothers, Kohn and Mr. Phelps, came in and addressing the Clerk, not me particularly, about this. I started to walk on out, and one of them said, "Judge we want to make a motion in this case." I said, "Gentlemen, I am going over to my stenographer's office, Mr. Clarence Walker's office, and I will entertain any motion there." They made no form of motion and I went on to my stenographer's office, where I had some work to do in the preparing of an opinion which I was careful in drawing, as the lawyers told me they desired to have it printed—in the case of Hannon against Briley, an opinion which had been rendered some time before, but the lawyer said they desired to have it published, and I was putting a little sand paper upon it in shape to go into the law magazine. I had not been in Mr. Walker's office revising and dictating more than 15 minutes, perhaps not so long, when my brothers Kohn—Aaron—and Zac Phelps came in. They said to me, "Well, Judge, we want to make a motion in this case." I said, "Very well, gentlemen, have you given notice." "No," they said, "we have not; the injunction was granted without notice and we desire to make a motion to dissolve it without notice." An injunction is granted without notice, but never dissolved without notice. I said, "Gentlemen, you will have to give notice." They said, "We can't find these parties." The stenographer said—spoke up and said Mr. Smith is council for plaintiffs, and he has an office just up-stairs, and was in here not more than two minutes; and Mr. O'Neil's office is just across the office. I said, "If you will serve notice upon these gentlemen I will consider it—regard it as sufficient notice." It is now about twelve o'clock, or a little after, and I will hear you at one in my Court room." My recollection is that I added "I will hear you at any time you will bring the notice to me served on either of these lawyers." There was a little soliloquy, in which my brothers Phelps and Kohn said, "Judge, you have turned us down." I said I have done what was my duty as Judge under my oath." I said, "Boys, I think we are ruining our party by this proceeding. You will break the party up." They said, "Will you hear this motion?" I said, "No, not without notice," when Mr. Kohn said let us go. They left me without letting me know whether they were going to serve notices, and I stayed in Mr. Walker's office about two hours, and never heard from them any more. It was stated the papers that undertook to criticize me that I did not allow—(Objected to.)

Q. I will ask you whether or not in that conversation between you and Mr. Phelps and Mr. Kohn, Mr. Kohn said to you that your granting this injunction was an outrage?

A. Absolutely and certainly not; Mr. Kohn is too decent a gentleman to make any such suggestion as that to me, and I would not have tolerated it a minute; and he knows and every other lawyer who knows me knows that I would not have permitted it.

Q. Did you at that time know that Gov. Bradley was in the city of Louisville?

A. I did not; and I desire to state, and I believe my brothers on the other side will not object to this short statement, that the editorial that stated Gov. Bradley was there by my procurement—an editorial by Mr. Watterson—is absolutely untrue. I did not know that Gov. Bradley was in the city until I saw the day before where he was going to make a speech; and on the ground of its propriety he said he would not. I assumed that he had returned to Frankfort.

Q. Had you ever had any conversation with Gov. Bradley about this matter, either directly or indirectly?

A. Not directly nor indirectly, by letter, by any person or by any channel or communication known to human ingenuity.

Q. Comments, or rather suggestions by cross examination, witness, have been made about the bill and the writ having been printed; I asked you do you know anything of that?

A. Nothing whatever. I will state, however, that the matter of the legal right to exclude these inspectors had been very much discussed on the streets and in the clubs, and I had read Judge Prior's letter; had examined the statutes, and had been very free to express my conviction that they were entitled to admission.

Q. Did you read Judge Hoke's opinion on this subject?

A. I did not see it; I heard that he had expressed this view.

Q. You had expressed your views in an interview?

A. I had expressed my views generally around the court house and at the clubs and I suppose that no one who knew me well did not know my views. And I expect any lawyer would have known that I would have acted on my convictions.

Q. Although you answered the question pretty fully awhile ago I will ask you—suggested by questions by council on the other side why you granted demanditory injunction without notice?

A. Because the law does not require it; and it has been the uniform practice in our courts.

Q. You followed the plain law?

A. Yes, sir, known to every reputable lawyer.

Q. I will ask you to give me the full particulars of the circumstances leading up to the writing of your letter to Gov. Bradley; and in answer to this question I will get you to detail what information came to your knowledge of the disobedience of the orders of your court?

A. In a word, afterwards, I returned to Mr. Clarence Walker's office, my stenographer. I think I had stated that I would be there at four o'clock, or five, somewhere along there, after the injunctions had been issued. I presume the copies had been served. I was in his office doing some work when in came a stream of men; such men as Mr. Pyrtle, Mr. Rutledge, Mr. Green, Mr. Tevis, and I suppose about 15 others; and they came in, appealing to me saying that the injunction had been universally, as far as they were concerned and others crowding the hall—universally disregarded, and that the officers contemptuously refused to obey them in many instances. They appealed to me and I says, gentlemen, I am simply a judicial officer; I can only order a thing to be done; I am not a ministerial officer and I cannot enforce the order. I am utterly powerless to enforce it, and there is no way to enforce it unless you have an officer. Some one said Governor Bradley is at the Galt House, and I then inquired about that. Without discussion I turned to Mr. Walker and said, take down this letter; and I dictated the letter to him and Walker wrote it out and I signed it. The letter speaks for itself. I said how will this letter be gotten to Gov. Bradley; and I don't know who took the letter. I saw a gentleman to-day who said to me I see you are under arrest—do you know I was the one who delivered that letter to Gov. Bradley?

Q. Who was that?

A. Mr. Woods. I said to Woods, "I don't know who took it to the Governor;" some one of them took the letter and that was the last I knew of it.

Q. That was all you did in that matter?

A. Yes, sir; I did all that the law required of me.

Q. I will ask you to state whether in your opinion as a citizen of Louisville—how long did you say you have lived there?

A. I married in 1876 and have been there since.

Q. Whether or not as a citizen of Louisville, the placing of the militia in the armory intimidated any voters of the city of Louisville and prevented them from attend-

ing the voting places and exercising their rights to vote?

A. I can hardly speak of that. I will just say that it strikes me as ridiculously absurd that it would frighten anybody; I do not believe the most nervous old woman in the town would have been frightened by it.

Cross examination by Col Young.

Q. You know now that the warrant of arrest was issued by Gov. Bradley and Judge Yost?

A. No, sir. I do not.

Q. Was sought by them?

A. I saw it in the papers; I have not spoken to the Governor since I came. I spoke to Judge Yost and shook hands with him. I suppose they were anxious to get my testimony in.

Q. When you used the word "contestant," it was a mistake?

A. Oh, certainly it was the contestee. I hope the stenographer will note that correction.

Q. You know perfectly well, Judge, what hours the polls close?

A. I believe four o'clock.

Q. This petition was brought to you somewhere between ten and ten thirty?

A. Yes, sir.

Q. You knew at that time that Messrs. Kohn and Phelps desired to represent the defendant?

A. Indeed I did not.

Q. I understood you to say that Mr. Balderick he wanted to get them?

A. Yes, sir; he said that; but I do not know whether they had been retained by these two or three hundred defendants or not, just a few minutes after the filing of the petition. I presume that they had been generally retained to represent anybody who might be in trouble on election day.

Q. Did you have the entire petition read to you?

A. All, Colonel, except the names of the defendants. I stopped council who started to read the names and asked him "Who are they?" He said, "The election officers, the Mayor, the members of the Board of Safety and the police—the administrative power of the city of Louisville." The entire petition, as well as the jurat were read to you?

A. Yes, sir; everything from the opening to the end.

Q. Did you observe then it had been sworn to on the day preceeding?

A. No, sir; I saw it was sworn to and it did not matter

when; did not effect the right to this injunction.

Q. Would it not effect your view about the right to notice?

A. I would not have required any notice because of the fact that it had been sworn to the previous day.

Q. Is it not the practice in your court, where it is possible and reasonable, to give notice of the application for an injunction?

A. I will say that I have been on the bench for thirteen years and I have issued at least one hundred such injunctions; and I believe that Judge Edwards has issued as many as five hundred, and I do not recall of any notice ever being given in any case before me.

Q. Is it not your practice in issuing injunctions where the parties know they are going to apply the injunction the day before—it is not your practice to require notice to be given?

A. Yes, sir; I require notice to be given upon a motion to dissolve.

Q. You had made up your mind as to the rights of the parties in this case?

A. Yes, sir, certainly; not with the view to issuing any injunctions, or acting upon it in any official capacity, but as every intelligent citizen does who thinks about a public question, I had made up my mind.

Q. I understand you to say that both at the clubs and at the court house you had expressed your views which you now have expressed, on your opinion as to the law?

A. Oh, yes. I do not think because a Judge has made up his mind upon a question of public interests, that he is to be dumb upon it. I do not want to be understood as saying that I had delivered curb stone lectures upon it. I had had conversations with various gentlemen; I think I met Judge Hargis and expressed to him my view and he concurred with me.—

(Objected to.)

Q. There were rights on the other side?

A. I do not think they had any right to object. You have read my opinion. I now with profound deference to the Court of Appeals, whose opinion is the law on the subject—in reversing me, and I shall follow in the future that law. But in my honest opinion, as Judge under my judicial oath to administer justice faithfully without respect of persons, I would have granted that injunction if I had believed it would have destroyed the Democratic party and the Republican party, on the sworn petition presented to me, that these plaintiffs would have suffered irreparable injury, without regard to consequences.

Q. Of course you have very fully and properly defined position?

A. I think you appreciate that a judge who is in my position, absolutely defenseless, seeing himself misrepresented before his fellow citizens, and whose good opinion he values as he values his life; sees himself presented daily as a conspirator, prostituting his office for political ends, would have a right to be agreed. A man would be destitute of the impulse of humanity and unworthy of its shape who would not feel indignant at this. I was advised to indite Mr. Watterson which I refused to do.

Q. You say you had not hesitated to express to a great many people your views on this subject?

A. Not a great many; I suppose twenty or thirty, about the court house and in the clubs.

Q. There were, as the Court of Appeals decide, rights involved in this?

A. Certainly.

Q. There are other Judges in town?

A. Judge Fields, you know, lives two miles out.

Q. Judge Miller lives in town?

A. I do not know where he lives.

Q. Judge Barker lives within the city limits?

A. No, sir; I know he goes in and out in the morning. I know I was congratulating him the other day upon his early arrival in town; and he said yes, you have to come only two or three squares, and I have to come quite a distance.

Q. There was nothing requiring you to take official notice of this matter?

A. Is it possible that a Judge is required to conceal his feelings upon a matter of public interest? I say to you that it is my opinion that I had no right to refuse it.

Q. Do you think it was just to these defendants, when you had openly expressed your opinion to pass upon this question, about which you had fixed opinions?

A. Yes, sir. I think it is entirely so.

Q. And without notice to the other side, although you had received notice on the day previous that the injunction would be sought?

A. That is absolutely incorrect.

Q. Did you know at the time this injunction was sought, know that it was the same injunction, or have any reason to know that it was the same injunction of which Mr. Helm Bruce had spoken to you the evening before?

A. When I issued that injunction I did not think of Mr. Helm, or Mr. Bruce; I did not regard him as connected with the case in any way whatever.

Q. At the time you granted this injunction it was six hours until the closing of the polls—from ten until four?

A. Yes, sir.

Q. How far was it from your court room to Mr. Kohn's office—about three or four hundred feet?

A. Yes, sir.

Q. How far was it from the court house—was it not a square?

A. No, it is a good deal more than a square across.

Q. A square is about 400 feet?

A. Possibly so.

Q. How far was it from your court room to the office of the Mayor of the city of Louisville?

A. A square perhaps.

Q. And to the office of the Chief of Police?

A. The same distance.

Q. What time was it you had the first conversation with the Chief of Police about this manditory injunction?

A. That night. That evening when parties were swarming into the office stating that defiance was being made to the injunction and the officers refusing to enforce it, some one came in and said that the Chief of Police, Mr. Haager, did not understand the injunction, although it was quite long and explicit, whether it was his duty to instruct the police to allow these inspectors to go in and see that the count was fair. Some one said Haager says if you will write him a letter—he would like to know your views. I said certainly, and I dictated a note to Haager, that that was the plain meaning of the injunction, and that he should, in order to obey it, have the police see that these men were not kept out of the voting places. That letter was sent and soon afterwards—a very few minutes—I thought hardly in time for the letter to reach him—Haager came in. It may have been a few minutes. You understand that I could not keep the minute in all these matters. Haager came in this room which was crowded with men and says: "May I see the Judge privately?" I said, "Certainly," and we went into the adjoining room and he says, "Now, Judge, I am your friend, and I have confidence in you as a judge, and I am going to ask you as friends and judge my duty in this matter." I says, "Haager, I will answer you in both capacities; you know yourself I am your friend," and he says, you are the one who got me upon the police force through your influence with Mayor Jacobs; and he said what shall I do? And I said to him, "I would say to you obey the injunction, it is not for you to set yourself up as judge of the correctness of the injunction; you obey it and you per-

form your duty. I would say that to you if you were my brother. I say to you as judge, if you do not obey it I will visit the penalties of disobedience upon you to the fullest extent." He says, "I will see that it is obeyed."

Q. Did not he say that he felt that you were making him do that he thought was wrong?

A. Absolutely no.

Q. That he did this because you told him to do it, and not because he thought it was right?

A. He said no such thing.

Q. Now as to these printed injunctions; you say counsel had them and they handed them to you?

A. No, I do not think the bill was handed to me. I saw the list and saw that the names were printed. I asked him whether it was sworn to. I now remember that I did not look at the jurat of the bill to see when it was sworn to.

Q. You saw this large number of names printed and this order printed, and that it was carefully drawn, and that made you perfectly aware of the fact that it had been prepared some days before hand?

A. If I had reflected upon it a minute I presume I would have known it had been prepared before hand.

Q. Did you reflect?

A. Oh, certainly; it might have been done that morning. Printing is done very rapidly now.

Q. You saw these notices thus printed?

A. I never saw any notices at all.

Q. The order of injunction is all printed?

A. Oh, no, I only signed one injunction; and they may have had two or three hundred copies.

Q. Whether you signed one or two it was a printed notice?

A. Yes, sir.

Q. You know now that the one you saw was a printed notice?

A. I signed only one, and whether they had one or one thousand, made no difference.

Q. In the petition, seeing these notices thus printed made you aware that they had been prepared before that morning?

A. No, you are assuming what is not true.

Q. You saw one of the notices?

A. Yes, sir.

Q. Therefore, you are bound to know as a reasonable and intelligent man that if the notice you saw was printed you are bound to know that these papers had been prepared before that?

A. Yes, sir. They could not print them in the room; they could not print them after they came there.

Q. Assuming that this jurat was made on the 6th, how could you construe those facts to be in harmony with the statement that the plaintiffs would suffer irreparable injury, if these inspectors were not placed in the polling places, when the papers had been previously printed and signed the day before?

A. I am satisfied that I did not see the jurat and its date. I say I did not read the jurat. I asked if the jurat had been sworn to, and was told that it had, and I took their word for it, just as I take your word or any other lawyer's on a matter of that kind.

Q. You did not inquire on that subject?

A. I asked if it was sworn to and they said it was.

Q. You did not ask the date, or see the date?

A. Oh, assuredly not.

Q. When you delivered this order to Gov. Bradley—wrote this letter to Gov. Bradley, explained to the Committee what was your object in writing to Gov. Bradley?

A. The representations that the injunction and orders of the court were being contemptuously ignored and defied, and these parties applying to me as judge—I knew that Gov. Bradley was the chief civil officer of the State, and that it was his duty to see the laws executed; and he could have commanded the sheriff, or could have commanded a posse, if there was no sheriff, or if the sheriff was not expected to obey him, knowing that Gov. Bradley was the chief civil officer—the head of one of the three departments of government, that it was his duty to see that the laws were obeyed.

Q. Could not you have commanded the sheriff?

A. It was impossible to command him.

Q. Could not you have commanded him to do it?

A. Yes, sir, when he is in my court.

Q. Could not you have sent for him?

A. No, sir, it was suggested to me that the sheriff was out engaged with the parties who were defying the writ.

Q. Has he not a large number of deputies in his office?

A. Yes, sir; but I do not suppose one could have been found at that time.

Q. Did you ask for one?

A. No.

Q. Did you send any messenger to find out?

A. No, sir, the laws does not require the judge to do a vain thing.

Q. What did you expect Gov. Bradley to do to enforce the orders of your court?

A. That was his province. I suppose that he would do whatever he thought was proper. If it had been me, I would have called out the militia.

Q. Was not that what you expected him to do?

A. That was his province. I was very careful not to entrench upon his province.

Q. Who told you he was at the Galt House?

A. I do not remember; three or four voices in the crowd.

Q. You do know that the message was carried by Mr. Woods?

A. Yes, sir; he told me.

Q. He is active in politics?

A. Yes, sir. As I say, I do not know who carried it for him. He said he delivered it to the Governor. I don't know whether he received it second hand or not.

Q. Do you know who you delivered it to?

A. No, sir. Two or three voices spoke up and said—It was my impression that it was one of the persons that had been kicked out.

Q. Did you take any affidavits from these parties?

A. Yes, sir; I think I required them to make affidavits.

Q. Did you order them filed?

A. I do not remember, I was not holding court. The affidavits were read. I assumed that the stenographer would take charge of them. Council came into the room —some one I have forgotten who.

Q. You were not issuing orders at that time upon mere statements?

A. Affidavits were made.

Q. You would not issue orders of this kind, unless there was some basis for it; sworn to, in the shape of an affidavit?

A. I never issued any order; I would not presume to issue an order to the Governor.

Q. You wrote a letter, or request?

A. No, sir; not a request, just a letter.

Q. Would you have written that without some sworn statement to be filed of record in court?

A. Yes, sir; certainly, on affidavits.

Q. Do you know what became of those affidavits?

A. No, sir; I do not.

Q. Were they read?

A. Yes, sir.

Q. You know who made them?

A. Mr. Tevis, Mr. Green, the banker, was one, and my impression is that Mr. Pyrtle was another; there were

others there, and it was quite plain to my mind that there was abundant proof and testimony to justify me in calling the attention of the chief executive officer of the State to the fact.

Q. These gentlemen you mention, you know as a matter of fact were all bitter partisans against Mr. Goebel?

A. No, sir; I do not.

Q. Do you not know that Mr. John Tevis was a candidate on the Brown ticket?

A. Yes, sir, but I do not think that is any reason for stating that he was a Republican.

Q. I said, partisan against Mr. Goebel?

A. You know there is a good deal of sin on the question of being a partisan.

Q. You knew that Major Pyrtle was bitterly opposed to Mr. Goebel?

A. Indeed I did not.

Q. Did you know Mr. John Green was?

A. I did not. I had never spoken to him on the subject before he came in there. When he said he was an inspector appointed by the Brown people, of course, I then knew. I knew he was an old Confederate, and I supposed he was voting the straight Democratic ticket. I did not know.

Q. All the information then you had of the disobedience to your process was through two affidavits which were filed by bitter opponents of Mr. Goebel?

A. Five or six filed—eight or ten.

Q. Eight or ten which you read?

A. There were two or three read and the balance were to the same effect.

Q. Did you interrogate the witnesses?

A. Oh, no.

Q. You simply took their statements when tendered by counsel, and upon that wrote the letter to the Governor of Kentucky?

A. Yes, sir.

Q. How long had you known he was at the Galt House?

A. Only at that moment. I will assure you that at five o'clock or at four o'clock, when I went in the office—I did not think about it at all, but my impression would have been that the Governor was at Frankfort, or his home.

Q. To be entirely frank, when you wrote that letter to the Governor that he would call out the militia?

A. I had no distinct formulated theory as to what the Governor would do in the premises. I know what I would have done. I think he did right, if you ask my opinion.

Q. If you had not believed that the Governor would have ordered out the militia in response to this letter, or suggestion or whatever you call it as to the condition of affairs, would not you yourself, through your own officers, the sheriff and his deputies, have had a right to prevent the wrongs which these gentlemen said had occurred?

A. If it had been possible—in day time, to get the sheriff; if he had been accessible.

Q. The real purpose in writing that letter to the Governor was that he should take charge of the militia?

A. Whatever he thought was proper.

Q. You did expect he would call out the militia?

A. I really could not know that he would or not. I relieved myself of the responsibility. I did not propose to have it said that I as judge had granted an injunction and had sat there and done nothing. I called the attention of the executive department to the disobedience of that injunction.

Q. Why did you call upon the Governor without having first having used the power and processes of your own court?

A. It is my own legal opinion that a judge in any case where he felt that the sheriff was not accessible, could call upon any executive officer of the state, including the Governor.

Q. You made the suggestion or request to call out the militia without having first sought to use the powers given by the constitution and the law?

A. I thought he would simply perform those duties imposed upon him by the constitution and laws.

Q. If Gov. Bradley did not use the militia, how was he to enforce your decrees?

A. I wanted to relieve myself of the responsibility. I am free to say, if you ask what might have been in my mind, possibly he would call out the militia. I think he ought to have done so.

Q. You did think he ought to do it; and believed that he would do it?

A. You are getting too metaphysical, if you speak of expectation. I did not know what he would do. I thought he ought to do it, and I knew that no harm could come to anybody by doing it; and that nobody could be terrified, except those who expected to violate the law.

Q. At the time you issued this order did you think that Gov. Brown had any chance to be elected?

A. I did not vote for Gov. Brown; I voted against him.

Q. Did you think Gov. Brown had any chance to be elected?

A. He voted against me when I was a candidate for the Judge of the Court of Appeals, and I have never had any affection for him from that day to this.

Q. Did you think he had any chance to be elected?

A. I never thought of him at all.

Q. What was your opinion about it?

A. I did not think Gov. Brown would be elected.

Q. If he had no chance, in your opinion, to be elected, how could he be subjected to irreparable injury?

A. I do not think because a man can not win a fight that he is not to be allowed a fair chance in the fight.

Q. How could he receive irreparable injury?

A. He might have been elected; but that was not the proposition before me. He had sworn in his petition—and once having been the honored Governor of this commonwealth, it was my duty to take his sworn statement as truth, and which I would do again. I wanted to do him justice, although he is no favorite of mine in any way shape or form.

Re-examination by Judge Yost:

Q. Col. Young lays particular stress upon the fact that the petition had been prepared before it was presented to you. Was a petition ever presented to you that had not been prepared beforehand?

A. Never was; I have been upon the bench 13 years and never had one presented to me that had not been prepared.

Q. Col. Young questioned you touching your knowledge—about your having had some information about this injunction before the day it was issued. I think you made yourself perfectly plain, but I will ask you this question. When Mr. Helm Bruce came to your house and notified you that he would possibly ask you for an injunction on the next day, did he give you any sort of information as to the character of the case in which he would ask you to issue an injunction; or as to the questions that would be involved in that case?

A. None whatever. I think he had too much respect for me to do it. I am sure Col. Young did not mean to say that I had any knowledge of this matter beforehand, because he knows well enough that no reputable lawyer at that bar would approach me upon a matter of that sort.

Q. When you spoke of your having been reversed by the Court of Appeals, you do not mean to say that the

Court of Appeals based that reversal upon the fact that this mandatory was granted without notice.

Objection sustained.

A. My views were expressed publicly; and the views of the Court of Appeals were expressed publicly; and I take my hat off to them and will follow the law as laid down by them hereafter.

Thomas J. Landrum, a witness called for contestee, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. Where do you live?
A. Louisville.
Q. How long have you lived in Louisville?
A. About twelve or thirteen years.
Q. Where were you raised?
A. Mayfield, Kentucky, Graves County.
Q. What is your occupation?
A. Manufacturer.
Q. Of what?
A. Clothing.
Q. Do you know Gov. Bradley?
A. I think I do.
Q. Have you ever been on his staff?
A. Yes, sir.
Q. How long?
A. During his term.
Q. Is that the extent of your military experience, Colonel?
A. It is, sir.
Q. Were you with Gov. Bradley in Louisville at the election?
A. Well, sir, if you will allow me, I will preface that by making a little statement.
Q. Go ahead.
A. Gov. Bradley made a speech in Louisville at our request two or three weeks before the election, I disremember the time exactly. At that time he was there, I think, one night. We had a little conference to his return. He objected to making more than one speech in Louisville or anywhere else; he said that he had to make a number of speeches in the upper part of the state; and invited Col. Mengel and I to accompany him from Ashland down. I telephoned him that he would have to ex-

cuse Mengel and myself, as he would be in the East and he could not go. I requested him to come to Louisville on the Saturday night before the election and be my guest at the hotel—the Galt House. He said he thought he would do it, but that was two weeks previous to the election. I was away from Louisville—went to Chicago, where I have an office, and remained there two or three weeks, arriving at Louisville on Saturday morning. I was informed that Gov. Bradley said that he could not attend that meeting, and that he had canceled that engagement. I went to the telephone and called Gov. Bradley up and talked to him as best I could. I could hardly distinguish what he said because he was so hoarse he said he could hardly talk.

Q. When was that?

A. In Frankfort. I talked to him and invited him to come and be my guest at the Galt House Saturday evening, and Sunday, if possible. He said, you want the word, you folks down at Louisville; I am broken down and can't speak, but I will come. Then we arranged for three speeches. When he came I took him in connection with a friend of his from Mt. Sterling, I think Major Wood—I think I have seen here to-day; we got in the carriage and got to Music Hall at eight o'clock; I think that Major Wood made the first speech; Gov. Bradley afterwards made a very short speech, and at the end of his speech we left the rostrum and left whatever other speakers there were there; I think Denny was one of the others. There were one or two speeches made there; one or two speeches made while Gov. Bradley and I were there—he made a very short one. We jumped into the carriage and drove down to Tenth and Walnut—maybe Thirteenth and Walnut; and afterwards to 23rd or 24th street. At that time, perhaps eleven o'clock, we went back to the Pendennis Club. I gave a little dinner in honor of Gov. Bradley, an about two or three gentlemen came and we stayed there and dined awhile. I guess it was running up to about one o'clock. We have an annual dinner at our club, and one or two of the directors came to the door and asked to be admitted, and they came in and they asked Gov. Bradley to join them. We left the club about 2:30, I do not know exactly what time—the Governor can tell you—and went to the Galt House; we had room 306, with two beds in the room, and I remained in the room with him that night. I give you this to show what it was coming up to. The next morning about eleven o'clock we got up, and I sent down for the papers, and I gave Gov.

Bradley one and took the other; and he commenced to read, of course, that message of the Mayor's that we have read so much about. We discussed that for quite awhile, and then went down to breakfast, and while we were at breakfast several gentlemen came around and talked a little. We came out into the main room of the hotel and they were swarming around him, and we went up in his room, and during the whole day a lot of people were in there. I do not know who were there; I have a list of some, and we discussed——

Q. Can you give any of the list?

A. Yes, sir; Mr. Helm, Col. Bullitt, Col. Mengel, Dr. Griffith, Mr. Haath, Col. Wilson, and I don't know who else. I turned away a great many. They published me that I had a great faculty of turning away the reporters and visitors. Of course, Gov. Bradley said he could not see every one, and he did not. They were besieging him, and I was looking out for his comfort as much as I could. He was my guest. That was Sunday; and Sunday night there was several gentlemen there and he remained over until Monday.

Q. Colonel, was Gov. Bradley present at the speech of Mr. Denny?

A. No, sir, he was not.

Q. Do you know whether it was his purpose to go home Sunday morning?

A. I think he would have gone home if it hadn't been for that trip to the Pendennis Club.

Q. And he would not have made that trip to the Pendennis Club but for you?

A. I don't know; I think he was a little desirous of going over to the club from a statement he made to me on the way.

Q. Then, during that day, do you know whether there was any conversation at all about assembling the troops at the armory that you heard?

A. I didn't hear a thing of that kind. I know there were a good many gentlemen in there talking to him about things.

Q. You don't know personally?

A. No, sir. In fact, I didn't know they had an armory, at least that they had engaged one, or didn't know the locality.

Q. Were you with Gov. Bradley on Monday?

A. Yes, sir.

Q. Tell the committee what happened on Monday?

A. I was with him part of the time. He was enter-

taining his friends that came up there, who talked to him about a great many things. Gov. Bradley promised us if his throat was in good condition, that he would make a speech on Monday night. That was late Sunday evening that we were talking to him, you know, and he said well, he would just as well make a speech as not, and he was steaming his throat Sunday night with an atomizer, and he said "Tom, I don't think I can make that speech, but I may be able to do it by doctoring myself up." And Monday things were very warm in the city there; he was getting reports from every place, and I heard him tell some gentlemen he didn't think he would make the speech, although we had engaged the Auditorium for that purpose. Monday evening when he heard that Mr. Caruth and this other gentleman—Mr. Hoertz, had changed 87 of the election officers, he discussed that with some gentlemen, and it seemed that he had changed his mind entirely on the street I don't know what they said to him, or what they had talked about, but he announced to me that he positively would not make the speech, and I assumed, if it is in order for me to make that statement, that he felt that it would create some disturbance, that he didn't want; he was not here for that purpose.

Q. Did you hear any conversation during that afternoon about assembling the troops at the armory Monday yourself?

A. I don't think I did, sir.

Q. You were not in any of these consultations?

A. I don't think I heard anything about the assembling of the troops. Col. Mengel is a personal friend of mine, but he never said anything to me about it. I noticed him around there several times.

Q. In the speeches that you heard, was there any denunciation by Gov. Bradley of Mr. Goebel or anybody else?

A. I never heard Gov. Bradley denounce Mr. Goebel in any speech he made; but on the contrary I heard him speak of him in a much better manner that I did myself.

Q. Do you know whether one of the conditions of his speaking there Monday night was, that he was to have a train that he could go home and vote on Tuesday?

A. Well, I don't remember to have heard anything about the train.

Q. Did you hear about his going home and voting Tuesday?

A. He didn't tell me anything about that.

Q. Colonel, what was your judgment at that time, as

a citizen of Louisville, as to whether the calling of the troops—that particular regiment at the armory, was or was not a wise and precautionary measure?

A. I thought after the change of these election officers that Gov. Bradley's presence was calculated to do more good at that time than anything else to keep down a riot. I could hear it rumored around, I don't remember just any special names, in the hotel and other places around there, that there was going to be a disturbance Monday night, and I believed at that time that if he hadn't assembled them, which I didn't know, that he ought to, that he would possibly have to act before ten o'clock the next day to keep down a riot that was brewing, seemingly, in my mind that night.

Q. In your judgment, was the effect of having that regiment assembled at its armory, to keep the peace, or to produce bad feeling?

A. I thought that the assembling of the militia was the proper thing, and I would have done so, and would have called them out sooner than he did.

Q. What do you think was its affect as preserving order and securing a peaceful election?

A. I think it had a good influence over the people.

Cross-examined by Mr. McQuown:

Q. You were Colonel on the Governor's staff?

A. Yes, sir.

Q. How long did you serve as such?

A. During his term—oh, I presume I was on it three years and a half—didn't draw any pay, however.

Q. Was that speech that Gov. Bradley delivered at Music Hall the night that Mr. Denny spoke, on Saturday or Friday night?

A. It was on Saturday evening—Saturday night.

Q. Saturday night?

A. Yes, sir.

Q. You went with the Governor from Music Hall to his other appointments—where were they, I didn't catch them?

A. I think one was at Thirteenth and Walnut, and probably Twenty-fourth street.

Q. He made three speeches then in the city of Louisville that night?

A. Three short speeches—he made a talk.

Q. Advocating the election of the Republican state ticket?

A. Yes, sir.

Q. The next day was Sunday, and you say the people streamed around there?

A. Well, when I say "streamed" around, I suppose that should be corrected. There were a great many people called around there to see him.

Q. You have mentioned Mr. Helm, Bullitt and Mengel—what Helm was that, Col. Landrum?

A. James Helm.

Q. James P. Helm?

A. W. O. Harris was there.

Q. Wait a minute, answer that question, please; was that James P. Helm?

A. James P. Helm was there, I think, Sunday evening.

Q. The attorney?

A. Yes, sir.

Q. What Bullitt was that—Col. Thos. W. Bullitt?

A. Yes, sir. Let me give you a list of them.

Q. Well?

A. I think that Mr. Harris was there; I think that Mr. Knott was there.

Q. I prefer that you would designate them by their given name.

A. Well, Judge W. O. Harris I think was there Sunday afternoon, or in the evening, I am not sure. R. W. Knott, Mr. Louis Haas, Mr. A. E. Willson, Mr. Mike Muldoon, and two, three or four gentlemen that were with him that I didn't know—two or three; I am not sure who they were. They called and paid their compliments. Dr. Griffith, Mr. Halsey, Thos. W. Bullitt, Mr. Helm, and I could not—there were so many came in to see the Governor, just to shake hands with him, and talk with him, that I don't remember whether there was a dozen or two dozen. I was down stairs a portion of the time; they would go up in his room and come down. They would ask me if he was up there, and go up and see him.

Q. Mr. Halsey, is he connected with either one of those Trust Companies?

A. I think he owns a coal mine out here some place; I am not sure. I think he is connected with some coal mine.

Q. Broker?

A. It was his brother, I think—one-armed man, I think.

Q. He is a broker, isn't he?

A. I don't know anything about his business.

Q. Were those gentlemen that called Republicans or Honest Election Democrats?

A. I could not say. I know that Mr. Knott is a Democrat.

Q. And he is an Honest Election Democrat?

A. I am not sure. I am not a member of the organization, and I don't know, personally, any of them.

Q. Well, he is the editor of the Evening Post?

A. Yes, sir.

Q. Mr. Halsey, Helm, Muldoon and Griffith—do you know their politics?

A. Griffith is a Republican. Muldoon I do not.

Q. Helm?

A. I don't know his politics, sir. I think he is a Democrat, though.

Q. Well, were you present when Gov. Bradley was discussing with those gentlemen, or with Col. Tom Bullitt, the propriety of calling out the militia in Louisville on election day?

A. I possibly was in the room, but paid no attention, and was out and in.

Q. You heard that discussion—heard the talk in reference to it?

A. No, sir; I don't think I heard anything about it; at least, I don't remember enough about it to make a statement.

Q. Well, I just want to ask you, Colonel, if you could state the fact that some reference was made to it in the conversation?

A. No, sir; I could not make that statement because I don't remember.

Q. Well, when did you first hear any conversation by Gov. Bradley, or those that came to see him at the Galt House, in regard to this matter?

A. Well, I didn't hear any special conversation about it until Monday night. It was discussed a little between Gov. Bradley and myself—I don't remember hearing him discussing it, and could not give you any information on that subject, the militia subject, with any given one.

Q. Didn't you know that the matter was under advisement and discussion by Gov. Bradley and his visitors Sunday and Monday, as to the propriety of his calling out the militia?

A. I stated to you a minute ago that I didn't know what he was talking to these men about, and that I paid no special attention to it.

Q. Well, I thought perhaps that you had heard from some source or other?

A. No, sir; I stated to you that I didn't hear it.

Q. You heard it from no special source?

A. No special source—nothing to give you any special information about it.

Q. Did you hear it rumored about the hotel?

A. No, sir.

Q. Then when was the first you heard of it?

A. Monday evening.

Q. What time in the evening?

A. Just after the removal of the 87 officers.

Q. Where were you?

A. Gov. Bradley and I talked about it ourselves up in his room. I asked him if he had assembled the militia, and I don't remember what he said about it, but I suggested that it ought to be done, and if I was Governor I would do it. He paid no special attention to that, however.

Q. You made that recommendation upon the fact of the removal of the officers?

A. Upon the fact that I heard a good many things around in the hotel, and one or two parties talking, that there was going to be some disturbance in the city of Louisville among the people.

Q. In reference to the removal of the officers?

A. Yes, sir.

Q. And upon that you based your recommendation?

A. I felt like the militia ought to be in readiness to subject the people that were trying to make a disturbance.

Q. Well, did you have any further conversation with the Governor about the calling out of the militia?

A. I don't think so, until the next day.

Q. What time was that, Colonel?

A. About four o'clock. There were two gentlemen came over from a precinct and asked the Governor to send the militia at once.

Q. Well, who were they?

A. Mr. Bush—Mr. Finley Bush, I believe, and a Mr. Jarvis.

Q. Now, they came and reported—

A. I think one of them was an Inspector; but I came in the room just as the Governor was talking to them, and they asked him to send the militia at once and have them placed inside the room, that they had been refused admittance

A. And they based the demand for the militia on the fact that they had been refused admittance to the polling place?

A. Yes, sir.

Q. That was shortly after four o'clock—about four-thirty, you say?

A. No, sir; I didn't say four-thirty.

Q. What time did you say?

A. I said about four o'clock.

Q. Around about four o'clock?

A. Yes, sir.

Q. Well, it was near four o'clock, then?

A. Yes, sir.

Q. Then about four o'clock these two gentlemen came and reported to the Governor?

A. It was about four or four-ten; they were just one square from the Galt House.

Q. They reported that they had been refused admittance as Inspectors, and demanded of the Governor to send the militia?

A. Requested him to do it.

Q. What did he say to them about that?

A. He said, "Gentlemen, I have no right or authority to do a thing of that kind under the circumstances, and I think it is very queer"—or something of that kind—"that you come to me with a request of that kind." He said, "There is no riot or disturbance around there of any kind, and I am not here for that purpose." He cut them off very short, as I thought, and so stated to him after they left.

Q. Now, did anyone else come and ask or request that he send the militia?

A. Not in my presence; those are the only two gentlemen.

Q. You didn't hear any more?

A. No, sir.

Q. Well, were you there at the time that he ordered the militia out?

A. No, sir.

Q. You were not with him at that time?

A. No, sir.

Q. You don't know when that occurred?

A. No, sir.

Q. And you don't know what was the cause or reason for it, when it occurred?

A. No, sir.

Re-direct examination by Col. Breckinridge:

Q. Were you present at any other conversation that afternoon with anybody coming into the Governor's room for troops?

A. I will tell you, Col. Mengel and Col. Gray came there on one or two occasions, and asked me if the Governor was in, and I think once they found him in the room, and once afterwards I was down in the rotunda and they asked me if he was in, and I sent them upstairs myself, but I never heard any conversation between them, because they usually walked off together.

Q. You heard nobody else come in except Finley Bush and Mr. Jarvis?

A. No, sir; I left right after that.

Q. Do you recollect a young German by the name of Huhlein—do you know Mr. Huhlein?

A. I think I saw Mr. Huhlein there, but I don't remember the conversation.

Re-direct examination by Mr. James:

Q. When you say that Richard W. Knott is a Democrat, do you speak as a Democrat on that question?

A. I know so little of Democracy, and care so little for it, that I cannot answer that question properly.

Q. I judge you don't know anything about Democracy from the statement that Mr. Knott is a Democrat.

A. T. Wood, being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. Where do you live?

A. Mt. Sterling.

Q. Were you in the City of Louisville on the day of the election, or shortly prior thereto?

A. I was there on the Saturday night before the election.

Q. When did you leave there?

A. I left there on Sunday morning.

Q. When did you go to the city, Judge Wood, and for what purpose, and with whom?

A. I went to the city with Gov. Bradley. We had made a trip around to several towns in the State, and I was with Gov. Bradley. We got to Louisville, I think, about four o'clock in the evening, maybe a little later than that, from Lexington—went down right through the city here,

Q. Did I understand you to say for what purpose you went, Judge; I didn't catch the answer, if you gave it?

A. Gov. Bradley had some appointments to speak in Louisville on that night, and we had been on a tour around over the State in different places, and he requested me to go with him, and I did so.

Q. What appointments did you and the Governor have beyond the appointments at Louisville that night; do you know what your purpose was, or what the Governor's purpose was, after that night?

A. After that night?

Q. Yes, sir?

A. Yes, sir. First, when we went there to speak, they wanted him to go over and make a speech at Corbin, but after he got to Louisville they suggested that he speak at the Auditorium on Monday night. He didn't want to go over there, and it was the arrangement that he was to speak there.

Q. There has been a good deal said, Judge Wood, in the testimony and cross-examination by the attorneys for the contestant, that Gov. Bradley was, at that time, a candidate for the Senate. What do you know about that

A. I know he was not.

Q. How do you know it?

Objected to, overruled and exception..

Q. You have stated that he was not; how do you know, Judge Wood? Upon what do you base that opinion?

A. In a speech I made on Thursday, I think it was, after speaking about the State campaign, and the vote for the Legislature—I think I stated so far as the Governor's race was concerned, I thought there wasn't any doubt about that, that Taylor would be elected, but that the fight was to be made for the Legislature, and that I desired to see the Legislature carried, and see Bradley elected to the Senate. After the speech he said to me, "Now, I have told you before—"

Objected to and sustained.

Q. Well, you state from your conversation with Gov. Bradley you know that he was not a candidate for the Senate, is that correct?

A. That is correct; at least he told me.

Q. A good deal has been said here about the character of Gov. Bradley's speeches. Now, I will get you to state what character of speeches he made?

A. The character of the speeches, mostly, was in defense of his administration, not perhaps in defense of his

administration, but comparing it with the administration before it—Brown's administration, and other administrations. That was the character of his speeches generally.

Q. That was the tenor of his speeches?

A. Yes, sir.

Q. In all of those speeches, did you hear Gov. Bradley make, or in any of them, was there anything said of an incendiary character, or of an inflamatory character, or bloodthirsty character?

A. Not a single word.

Q. Did you ever hear him in any or all of those speeches denounce Mr. Goebel personally, or say anything about him personally?

Objected to unless it is confined to the speeches in Louisville.

By the Chairman: Yes, sir; confine it to those speeches.

Q. In his speeches at Louisville? Now, Judge Woods, you may say whether or not, in any speeches you heard him make in the City of Louisville, he denounced Mr. Goebel, in any way?

A. I heard Gov. Bradley make two speeches in the City of Louisville; one speech I was not present; and if the Board will allow me, I will explain the whole matter.

Q. That does not make any difference about the explanation; we are pressed for time; just answer the question?

A. I heard him make two speeches there, and I know that he never said anything derogatory to Mr. Goebel's character at all, and didn't make any abusive speech. And I know Mr. George Denny was not present when he made the speeches, and I know that he was not present when Denny spoke.

A. D. James, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Dr. James, what official position do you hold, if any, in this State?

A. I am United States Marshal for the District of Kentucky.

Q. How long have you held that position?

A. Since the 25th day of June, 1897.

Q. I will get you to state Dr. James, how many deputies, field deputies, and office deputies, and deputies of

all kinds, you had under you on the day of the November election, 1899, and for thirty days prior thereto?

A. Nineteen.

Q. I wish you would give their names, and the date of their appointments?

A. Well, I can give them to you by memory, or memorandum.

Q. If you have a list of them, call them out?

A. I have fifteen Field Deputies; I suppose they understand the meaning of Field Deputies, and I have four Office Deputies.

Q. Now, give the names, and which ones are Field Deputies, and Office Deputies?

A. I will first give the Office Deputies. T. A. Mitch ell is the Chief Deputy. His home is in Vanceburg, Lewis County, Kentucky.

Q. Now, I want to know when he was appointed?

A. He was appointed, I think, a couple of years ago —October 10th, 1898. He is the Chief Deputy, you understand. W. A. Blackburn, Bookkeeper; his home is Marion, Crittenden County; he was appointed July 28th, 1897. M. C. James; his home is in Louisville; appointed September 1st, 1897; he is the office boy. H. Horton is Stenographer; was appointed July 6th, 1897. That, you understand, with the Stenographer, makes the number of four in the office; they are Deputies and do the office work. I have no Field Deputies in the Fifth Congressional District; have no authority to appoint a Field Deputy in the City of Louisville. No authority has been given to the Marshal since 1896. That was revoked when the Marshal in 1896 was placed on a salary. Under the old law, when Marshals received fees, the number of Deputy Marshals was not limited, as Capt. Blackburn, my predecessor, will tell you. Since the Marshal has been placed on a salary the number of Field Deputies is limited to fifteen, no more can be appointed unless authorized by the Attorney General.

Q. (By Col. Breckinridge.) And none can be appointed for the Fifth District?

A. No, sir; none whatever for the Fifth District.

Q. (Judge Yost resumes.) Now, go on and give the names of your several Field Deputies in the State?

A. J. D. Keel, Pikeville, that is in Pike County on the Big Sandy river; was appointed August 1st, 1899. I have had other Marshals prior to that, but they have been removed for one cause and another. George C. Thompson, Lebanon, Kentucky; his appointment was dated July 19th, 1897.

Q. (By Gov. Bradley.) London, Ky.; isn't that?

A. Lebanon. T. J. Page, Tompkinsville, Ky.; commission dated July 12th, 1897. W. M. LaRue, Paducah, Ky.; commission dated July 4th, 1897. Conn McCarthy, Frankfort, Ky.; commission dated July 20th, 1897. John D. Campton, Covington, Ky.; commission dated August 6th, 1897. W. T. Short, Mt. Sterling, Ky.; that is Rockcastle County; commission dated August 31st, 1897. Pres Jackson, Louisa, Lawrence County, Ky.; commission dated January 12th, 1898. Lincoln Denton, Somerset, Pulaski County, Ky.; commission dated March 21st, 1898. Fred Isbell, Pineville; appointed April 16th, 1898. Moses Dickson, Bowling Green, Ky.; appointed June 27th, 1898. J. Coleman, Montecello, Ky.; that is in Wayne County; appointed October 17th, 1898. John B. Rodgers, Leitchfield, Grayson County, Ky.; appointed April 13th, 1898. John C. Morgan, Beattyville, Ky.; appointed April 18th, 1898. B. A. Fuson; he is at Hindman, Knox County, Ky.; appointed April 28th, 1899. A. B. Patrick, Salyersville, Magoffin County, Ky.; appointed May 13th, 1899. J. Howard Wilson, Mt. Sterling, Ky.; appointed September 21st, 1899. That is the last. I will say that Marshals have no power to appoint a Field Deputy.

Q. (Judge Yost resumes.) What was the object in having Field Deputies; what was their duties, in other words?

A. They served processes in their counties.

Q. Did any of those have a right to serve processes, or do field work in Louisville, Jefferson County, Kentucky?

A. No, sir; they could not serve processes there at all.

Q. Where were you on the day of the November election, 1899?

A. I was at my home, and voted.

Q. Where is your home?

A. Penrod, Muhlenberg County.

Q. It is charged, Doctor, in the notice of the contestant here, that you conspired with the leaders of the Republican party to intimidate and deter the Democrats and the friends of the contestants from voting for him, and that you and other officers and persons threatened to indict many of the contestant's supporters in the United States Court for the District of Kentucky for alleged violations of law; did you ever make any threats to indict anybody about any of those matters?

A. None whatever, and never gave any orders to any Deputy Marshal.

Q. Was there any understanding or agreement of that kind between you and any of the leaders of the Republican party, or any of them, or anybody else?

A. None whatever. I was not a member of any committee whatever.

Q. Did you ever cause any threats, or notices of that sort, to be published in any of the papers of the State?

A. None whatever, sir. I saw several notices.

Q. It is also charged, Doctor, that upon the day of the election you caused Deputy United States Marshals to be and remain at the polling places in the City of Louisville, and in various other cities of the Commonwealth; is that true?

A. No, sir.

Q. I will get you to state how many polling places there are in the City of Louisville?

A. Well, I only know from information. I think there is a hundred and some odd.

Q. And how many deputies did you have, all told?

A. I have only got nineteen in all.

Q. How many were in the City of Louisville on that day?

A. On that day—this young lady and that boy.

Q. What is the size of that boy that is supposed to have spread over a hundred and odd polls?

A. He weighs about 126 pounds. I don't know how much the stenographer weighs.

Q. How old is that boy, the Deputy Sheriff?

A. He is twenty-two or three years old.

Cross-examined by Mr. James:

Q. Doctor, were you present when Judge Evans instructed the grand jury in Louisville in October?

A. In October?

Q. Yes, sir.

A. Possibly I was. I could not say that I was, because in the court at Louisville, I am always in the office; we pay altogether by checks—every witness and every juryman that is excused we pay by checks. I read it, and I think possibly I heard part of it.

Q. You know from the reading of it that he did instruct the grand jury to investigate and indict everybody that was guilty of any violation, as he contended, of the United States laws in this State election?

A. No, sir; I don't know any such a thing. I read the instruction, and my recollection is, the part of the instruction that I heard was in April.

Q. The Louisville Evening Post is considered as

reasonably good Republican authority in Kentucky, isn't it?

A. I don't think any paper is reliable.

Q. You don't think the Louisville Evening Post is reliable?

A. Not the news of it. I have seen a good many publications in all of the papers in reference to my office that I know are not facts. The Times published I was at Bowling Green fixing to make the arrest of some very prominent Democrats, and the paper was handed to me at the time—it was in the two o'clock edition; I was in the court room, I am always there when the court is in session, and I handed it back to the party that handed it to me. I was never in Bowling Green with the idea of arresting anybody, and have no power to arrest anybody, more than any other private citizen, unless I have a warrant, and that warrant is approved by the United States District Attorney.

Q. I will ask you if this was not in the charge of Judge Evans: "And I will say to you further that this Statute does not apply to Congressional elections nor Presidential elections only. It applies to all elections in which the colored man has the right to vote?"

A. I cannot say whether Judge Evans said that or not. I never heard the instructions.

Q. Doctor, how many counties were you in, in Kentucky, in the month of October, 1899?

A. I was wherever our court was. I go with the court.

Q. Were you in Jessamine County sometime before the election?

A. I was not.

Q. Were you in these various counties—

A. Which counties do you have reference to?

Q. Well, in the counties that you were in, and didn't you say that the United States Court was going to indict any man that violated the election law?

A. I did not, sir.

Counsel for contestee objects, unless counsel for contestant fixes the time, place, circumstance and person.

Q. You saw publications in the newspapers to that effect, didn't you?

A. I did.

Q. Did you deny those publications?

A. It was not necessary for me to deny publications that I saw, that I gave no authority for.

Q. Didn't you know that such publications as that were calculated to excite the public mind, about the interference of the United States authorities?

A. I will admit, I thought the Times hard up to publish that sensational story from Bowling Green when there was no truth in it.

Q. You didn't deny it, however.

A. There was no necessity for me to deny it, because the people of Bowling Green knew it wasn't a fact.

Objected to and sustained.

Q. Mr. James, did you ever say to anybody prior to the election, that you and the officials under you were going to arrest men that violated any of the laws of the United States in the election?

A. Never did, sir, in my life.

Q. Never did, to any person?

A. No, sir; to any person.

Q. I will ask you if you didn't, at numerous times, in conversation with numerous people, say that it was the purpose of Judge Evans and of you, and of the officials under you, to indict and arrest, and that you would have United States Marshals at all the different polls throughout Kentucky?

A. No, sir; I have more sense than to talk to any sane man such language.

Q. Doctor, you were in many conferences of the Republican leaders in Kentucky, were you, or not, before the election?

A. I was in very few.

Q. Can you tell us one that you were in?

A. Well, I had a conference or two with one or two friends of mine. I was in no regular conference, no gathering.

Q. Name them?

A. Well, I frequently had talked with some one of the heads of departments there. We would be out at dinner somewhere, and we would talk just as friends would, what the result was, this and that; but I was at no regular conference—made no speeches during the campaign.

Q. I am talking about any of the leaders in Kentucky; were you in conference with them, you understand what that means?

A. No, sir; not in any conference—

Q. Were you in conference with Bradley or Taylor, or Denny?

A. No, sir.

Q. Or any other Republican officials in Kentucky?

A. No, sir.

Q. Were you in conference with Senator Deboe?

A. Well, when Senator Deboe came up to Louisville I would always call on Senator Deboe, and we had conferences.

Q. Well, in any conversation with any of these leaders was anything said about United States Marshals?

A. None whatever, because I knew I had no authority to exercise such power, and I certainly would not be talking about something—

Q. You then state, as United States Marshal, you had no right to interfere?

A. None in the world—none whatever.

Q. And none of your deputies had a right to interfere?

A. None; not without a warrant.

Q. Doctor, how many men have been arrested in Kentucky by Judge Evans?

A. How many men have been arrested by Judge Evans?

Q. By order of his court?

A. That would be a matter altogether for the record to show.

Q. I mean, since the election, for violation, or assumed violations of the laws of the United States at the last election?

Objected to; overruled and exception.

A. Well, now, that would be impossible for me to answer, the number.

Q. Well, about?

A. When a warrant comes to the Marshal's office, it is docketed; it is then registered and forwarded to the Marshal living the nearest in point of distance to the party to be arrested. We examine to see whether it has been approved by the District Attorney; the Marshal is not presumed to know what the offense is; we do not know. When the warrant comes to the Marshal's office to arrest a man, the Marshal don't know the offense; the warrant does not state the offense, and the Marshal don't know the offense.

Q. My question is, about how many. As the United States Marshal, you are reasonably familiar with that office?

A. My record is there.

Q. Were there fifty?

A. I could not say whether there was a dozen there.

Q. Well, was there a dozen?

A. I don't know. I am not going to answer a question—

Q. Well, you have got a list of the men arrested since the election, and got a list of the men arrested for violations of the election law, or assumed violations of the laws, in this state?

A. I should think the District Attorney could give you that information.

Q. I should think the United States Marshal could give it to me, too?

A. I could not; I have nothing to do with the Grand Jury.

Q. Do you refuse to do that?

A. All arrests are made from my office. When a warrant is issued by a United States Commissioner or by the order of the Court and comes to the Marshal's office, it is examined to see that it has been approved by the District Attorney; we then docket it.

Q. Do you want to be understood as saying to this committee, from your knowledge of your office, as Marshal for the Fifth District of Kentucky, you can't give them an estimate of how many men have been arrested for violations, or assumed violations of the United States laws in the last election?

A. I say that the warrant that comes to my office does not state the offense.

Q. Answer my question; read it to him again. I didn't ask you what the warrants stated.

A. Then how am I to say how many warrants I received for persons that violated the laws, unless the warrants show?

Council for contestee objects, because it is purely hearsay; objection overruled and exception.

By the Chairman: I think he ought to answer the question the best he can?

A. I would like to see a sheriff answer how many warrants he has served.

Q. Before we adjourned for supper, I was inquiring of you whether or not you could tell the committee how many persons were arrested by warrants issued from the United States Court against persons for assumed violations of the United States laws at the election in 1899, November?

A. Well, I will answer that—I tried in my way to answer the question in the way that I understand it, but it seemed you wanted me to answer the question in the way that you understood it. I make no arrests myself, have never arrested a man since I have been in office. The Commissioners from over the state—different United States Commissioners, hold their courts, warrants there are issued, they go to the District Attorney and to all the Deputy Marshals, and I have no knowledge whether that man is arrested for one offense or for another.

Q. Well, I will ask you how many persons have been indicted in the Federal Circuit Court in Louisville?

A. Not being the District Attorney, I couldn't answer that.

Q. How many in Frankfort?

A. I will answer that by the same answer.

Q. Have you no knowledge whatever?

A. I have not.

Q. Has a single man been arrested?

A. Yes, sir.

Q. About how many?

A. Well, I know of perhaps by name twenty or twenty-five.

Q. Please name them?

A. Well, now, I will state I don't know their first names.

Q. Give us the name as far as you know, and their places of residence, if you know?

A. I don't know as I can call the name exactly right.

Objected to, as being a matter of record, etc.

A. That is what I am trying to do and that is all I propose to do, is to state what I just know from my own knowledge, and I say to you that I cannot state any man's name who has been arrested, for I don't know. I know there was one or two here at Frankfort, or three perhaps, but I don't remember their names.

Q. Did you not a moment ago say to me that you could give the names of twenty-five?

A. I did, and I tried to think of the names in Louisville that were arrested, but I could not call them. I cannot call the men's names. I read it in the papers but I cannot call the names.

Q. A moment ago, so you stated, that you knew the names of about twenty-five?

A. I said that is my recollection. I have been studying since I went to supper about it and I thought so many in Lexington and so many in Louisville, counting up as could all I remembered.

Q. About how many in Lexington?

A. I think there was perhaps, it has been some twenty twenty-five, my recollection is, but I don't know the names, I couldn't tell the names.

Q. In Lexington?

A. No, sir; in different parts of the state.

Q. I asked you about how many at Lexington, if you know?

A. I couldn't say.

Q. Some have been arrested there, however?

A. I think so, but I am not positive about that.

Q. How many have been arrested here in Frankfort?

A. Well, I can't be positive about that. I think there was two or three arrested, I don't know what was the

result as to the examining trial, I couldn't say about that.

Q. Any arrested from Midway, Woodford County?

A. I couldn't say whether there was or not. My recollection is there were arrests made there.

Q. Any arrests made in Covington?

A. I don't think there was.

Q. Any arrests made in Jessemine County?

A. I can't say from memory.

Q. Any arrests made in Paducah?

A. I can't say from memory. You will understand, Mr. James, that Paducah is a court district. The court is held there. They have a United States Commissioner there; a United States Clerk, and the warrants are issued there. It is a matter of record in the Paducah office.

Q. Any arrests in Louisville?

A. Yes, sir. As I said, and I thought awhile ago I could call a few names, and I have read frequently about their being arrested.

Q. About how many?

A. I don't think we have made many arrests there, perhaps just speaking from my memory, not from the record, possibly a half dozen.

Q. Were those arrests made in obedience to the cha ge delivered by Judge Evans to the Grand Jury of October 3, 1899?

A. I couldn't answer that, I don't control the Grand Jury. The Grand Jury is controlled by the District Attorney.

Q. I understand you don't control the Grand Jury, but you have some information?

A. I have not. I do not go to the Grand Jury. I do not control them at all. They are in the hands of the District Attorney.

Q. After this charge was given to the grand jury by Judge Evans that they had a right to arrest persons for a violation of the United States laws at this election, did you communicate that to your deputies?

A. I did not.

Q. You never gave them any information, either oral or written?

A. No, sir; every letter that goes through that office to the deputies is a matter of record.

Q. Did you have any conversations with your deputies or any of them?

A. No, sir.

Q. In regard to that?

A. No, sir; none took any part whatever.

Q. Was not four people arrested in Stanford for violations or assumed violations of this United States law?

A. You seem to know better about it than I do. I tell you I know nothing. When men are arrested, what the process is, I am not supposed to know.

Q. You say the warrant does not show?

A. No, sir; the warrant says to the Marshal: "You are commanded to arrest such and such a party who has committed an offense against the Government of the United States and to appear before such and such a court. It doesn't state on the face of the warrant what the offense is. You as an attorney know that. Col. Young does.

Q. Out of all these persons punished for these violations, assumed violations of the United States law, I will ask you to state if it is not true that everyone of them were friends and supporters of Mr. Goebel for Governor?

A. I don't know any such thing. I didn't know who was Mr. Goebel's friends or who were not Mr. Goebel's friends.

By Judge Yost: We will concede that the violations of the law are all on that side.

A. The Courier-Journal, if you will let me—

Q. Did you ever notice in the Louisville Post and Dispatch prior to the election, a statement that the United States Marshals would be at the polls and they would seek out and get evidence against all persons who violated the United States laws at that election?

A. I don't remember that I did. I saw a great many statements in different papers as to what the Marshals was doing, what the Marshals would do, and the Marshals was then in a number of towns, when I was sitting in my office in Louisville.

Q. You try to perform your official duties accurately?

A. I do.

Q. And vigilently?

A. I do, and I think I am doing so.

Q. After the charge given by Judge Evans to the Grand Jury—

A. What charge do you have reference to.

Q. The one that you told me before supper that you read upon the election?

A. Yes, sir.

Q. After that charge was given to the Grand Jury, you being the United States Marshal, do you say to this committee that you never had a conversation with a single deputy of yours in regard to their using vigilence

in order to ascertain witnesses, in order to indict the offenders of that law as contained in that charge?

A. Never in my life. I think you read the editorial in the Courier-Journal in which it said that I had Marshals prowling around every precinct in the State of Kentucky. You have read that. I have never instructed a deputy of mine with any such instructions. It is not my duty to do that. My letter record will show that my instruction to my deputies are to obey the instructions, and the instructions come from the department, to serve processes and return them properly, and how to conduct themselves, etc.

Q. When persons sought you out to inquire of you before the election in regard to whether or not arrests would be made if witnesses could be obtained, what did you say to them?

A. None ever sought me out.

Q. No person during this campaign ever inquired of you about that?

A. No, sir; none at all. I don't think anyone thought that I had any power to do anything. I don't see how they could that I had any power to arrest anyone. I have got no power to arrest anyone without process.

Q. You have power to find out evidence to put before the Grand Jury?

A. No, sir; I am not consulted.

Q. If you had information of a violation of the law, would you submit that to the Grand Jury or not as an official?

A. Not at all.

Q. You would not submit that to the Grand Jury?

A. I don't submit anything to the Grand Jury, never have been called before the Grand Jury since I have been in office.

Q. When Judge Evans gave this charge to the Grand Jury in October, how long did that Grand Jury to which he had given this charge stay in session?

A. I think that October Grand Jury, my recollection is, speaking from memory, we pay off the Grand Jury, we have nothing to do with the Grand Jury except they are discharged and come to my office to be paid. My recollection is that Grand Jury was in session perhaps ten days.

Q. Ten days. I will ask you—

A. Or maybe two weeks.

Q. Whether or not it is true that Judge Evans adjourned that Grand Jury over to meet after the election?

A. Well, I couldn't answer that question for I don't know.

Q. You won't say he did not?

A. Well, I will say I don't know.

Q. Do you remember the name of any of the Grand Jurors in the Federal Court in Louisville at October to fill vacancies after the election?

A. To fill what vacancies?

Q. Yes, sir; in the Grand Jury that were filled after the election?

A. No, sir; I do not. The Grand Jury is made up, the venire—I want the committee to understand I have nothing to do with making the Jury, I don't know anything any more about who is going to be on the United States Grand Jury or a Petty Jury than you do, and when the venire is made, there is a Jury Commissioner, so I understand, the venire comes to me approved by the District Judge, that you are commanded to summon such and such men for a Petty Jury service and Grand Jury service.

Q. You do not go around there blind when there is a jury sitting in a court in which you are an officer. You certainly recognized some face or some name?

A. I couldn't say. You can introduce the Grand Jury perhaps, and find out I don't know who the Grand Jury are.

Q. Was Mr. John B. Pirtle a member of the Grand Jury after the election to fill a vacancy?

A. I couldn't say whether Mr. Pirtle is or not. I don't know Mr. Pirtle.

Q. You don't know him?

A. No, sir; and I was—

Q. Was George Gaulbert on that Grand Jury to fill a vacancy?

A. I couldn't say whether he is or not. I am not acquainted with Mr. Gaulbert. I know very few people in Louisville.

Q. Will you kindly furnish to the committee a list of the Grand Jury before the November election and those that filled vacancies after the November election?

A. I have no authority to furnish any list.

Q. Could you not obtain that list from the records of your office, the persons you summoned and the persons you paid?

A. Why, the record is there, it is a matter of record.

Q. I say will you kindly make out a list as indicated to you and send it to this committee when you go back to Louisville?

A. That is a question whether I have a right to do it or not.

Q. The records are there in your office, are they not?

A. Yes, sir. You can examine the records, and whether or not I have the right to give out copy of the United States record or not—

Q. State whether or not you decline to do that, or not?

A. I will say this, if you allow the question, that any gentlemen can come there and I will show you the records.

Q. You know that I haven't any time to come there?

A. You can send some one.

Q. I want to know whether or not you decline to furnish the list to the committee?

A. I don't propose to say that I will furnish a copy of the records without the authority to furnish a copy.

Q. It is your own record in your own office?

A. Yes, sir, but I am merely the agent, and I have the custody of the records.

Q. Do you think you would be violating any law in the world by merely bringing to this committee a record of the grand jurors summoned before the election and those after the election?

Objected to; objection sustained.

Q. In regard the politics of these persons arrested, you are not informed in regard to their political affiliations?

A. No, sir; I don't personally know any gentleman who has been arrested.

Q. As a matter of fact, don't you know that they are every one democrats that have been arrested?

A. You, my friend, want to infer that I am supposed to know. I don't know.

Q. You are a pretty good politician, aren't you?

A. Not so good as you are.

Q. I don't take any issue with you on that. You are a Republican?

A. I don't raise a question when I receive a process as to whether a man is a Republican or a Democrat. I know that I have to make a return on that process.

Q. Very impartial, I doubt not?

A. That is what my duty is.

Redirect examination by Judge Yost:

Q. Where can a list of all indictments found in the several United States Courts of this state for violations of the election laws be obtained?

A. Well, now, you are getting at the point. In the United States Clerk's office. I have no record of those

things. I simply pay off the juries, and pay off the witnesses.

Q. In the several clerk's offices of the United States Courts?

A. I don't know what a witness is there for. He comes and presents a certificate from the clerk that he has attended so many days and is entitled to so many dollars, and I draw a check.

Q. You have been asked if a great many people have been arrested in obedience to Judge Evans' charge to the Grand Jury. I will ask you to state whether as a matter of law and fact you don't know that if anybody was arrested, they were arrested under warrants issued on an indictment found by the Grand Jury, and not under Judge Evans' charge?

A. That is right.

Q. Now, Dr. James, counsel asked you a question as to whether or not you had seen in the press of the state charges against you for taking a very active interest in the election and threatening the voters of the state, trying to intimidate them by threats of arrest?

By Mr James: I never asked him any such question.

Q. And whether or not you have ever denied that accusation. I will ask you this question following that: Did you ever see in the Evening Times a few days before the election, under flaming head lines, a description of a very able and eloquent speech made by my friend Ollie James in Owenton, and if you did, did you ever see him deny it—where he denied it?

A. I read the speech, I couldn't say whether I ever saw the denial or not.

Q. Did he ever deny it?

A. I couldn't say.

Re-cross examined by Mr. James:

Q. You say that you read that just before the election?

A. I couldn't say, my recollection was it was before the election.

Q. Don't you know as a matter of fact that the speech that he has called your attention to made in Owenton, was made in August, the 27th day of August, instead of October?

Objected to.

Q. Can you get a copy of that speech and file it with the committee?

Gov. Bradley made the following statement: The

other day when Mr. Wm. Harrison was on the stand, he was asked to file a letter which Mr. Minix, the clerk of the Magoffin Court, wrote to him. His statement was that he wrote to him something about ballots, and afterwards countermanded the order. He now sends the letter of Mr. Minix, together with his own letter, which I would like to file. He says in his letter that he made a mistake, that the order was not countermanded. He answered this letter and never heard any more from it.

The letter was read as follows: "Saylersville, Ky., Oct. 16, 1899. The Bradley & Gilbert Co., Louisville, Ky. Gentlemen: Can you furnish this county with poll books for November election, 1899; if so, let me hear by return mail, and if you can not, let me know by return mail. Don't fail to attend to this matter at once. Yours very truly, R. C. Minix, C. M. C. C."

The letter addressed to Gov. Bradley is as follows: "Louisville, Ky., Jany. 25, 1900. Hon. W. O. Bradley, Frankfort, Ky. Dear Sir: Upon examining our files, we find that Mr. R. C. Minix, Clerk Magoffin County Court, did not countermand any order for ballot books. We enclose his letter asking for information concerning the printing of them, which we duly answered. No reply was made to our communication, nor have we had any letter or inquiries concerning ballots or ballot books from him since the date of letter enclosed (Oct. 16", 1899). The memory of the writer was erroneous, in supposing that he had either ordered or countermanded any order for them. Very truly, William Harrison, Secy."

Charles E. Graham, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live?

A. Paducah, Ky.

Q. What official position, if any, do you hold in McCrackin county?

A. I am clerk of the County Court.

Q. Have you the ballots used in the several precincts in McCracken with you at the last November election?

A. No, sir.

Q. Have you the stub-books?

A. Yes, sir.

Q. Have you any of the ballots?

A. No, sir.

Q. None at all?

A. No, sir.

Q. None left. For whom were you summoned to appear in this case?

A. I was summoned by the contestee.

Q. Have you shown those stub-books to any of the attorneys since you came to this city?

A. Yes, sir.

Q. To whom did you show them?

A. I showed one stub-book to Mr. Hendricks.

Q. Were you requested by any of the attorneys for the contestees to let them see your stub-books?

A. No, sir; I think not.

Q. Were you or not requested by John L. Scott, who is acting for the attorneys in this case for the contestees, to show him your ballots?

A. I was requested by Mr. Ed. Farley—summoned from my county.

Q. Did you show them to Mr. Scott?

A. No, sir.

Q. Did you refuse to show them to Mr. Scott?

A. I expect I did.

Q. Why did you refuse?

A. For the simple reason that I told him that I was summoned here to appear before this Board—I told him that I was summoned to appear before this Board, and that I would appear before this Board when they got ready for me.

Q. Then why did you show them to Mr. Hendrick?

A. I showed them to him because I wanted to show them to him.

Q. And you refused to show them to the attorneys for the contestees because you wanted to refuse?

A. Because I didn't want to show them to him.

Q. I have called out this matter because it is not my practice, or the practice for any of the attorneys of the contestee to summon a witness until they have talked to him. If you don't care to refuse now, will you let us now see your ballots—stub-books?

A. Yes, sir.

Q. Before these ballots are examined, I will ask you to state whether or not you were directed by any of the attorneys for the contestee not show us the ballots?

A. No, sir.

Q. I will ask you to state whether or not you told John L. Scott, in the presence of Ed. Farley, in this city, that Mr. Louis McQuown and John K. Hendrick told you not to show them to us?

A. I told the gentleman that I was talking to.

Q. Answer yes or no, first?

A. No, I wont say anything——

Objected to unless he answers categorically.

The chairman ruled that witness could answer in his own way.

A. I told him that I had talked to Mr Hendricks and Mr. McQuown about the matter, and that I had also heard the reading of the counter-petition here, and heard some statements made about frauds in McCracken County that I knew were not true, and that I would rather come before this Board before I showed any of the papers or testified to anything in the case.

Q. The question is, did you say to these gentlemen, or either of them, that you had been instructed by these gentlemen, or either of them, not to show them—that is the question?

A. I don't think I did.

Q. Did either one of these gentlemen instruct you or ask you not to do that?

A. No, sir; I told them I was not going to do it.

Q. Did either one of them advise you not to do it?

A. No, sir, I told them that I was not going to do it.

Q. You volunteered that statement?

A. Yes, sir.

Q. I am glad to hear that you did. I will get you to bring in those stub-books?

A. I can not bring them in to-night.

Q. Where are they?

A. They are in the County Clerk's office in this city.

Q. Will you bring them in to-morrow afternoon at the sitting of the Board?

A. Yes, sir, I will get them to-night for you, if you will let me.

Q. I don't want to examine you any further until you bring them in. See if you can identify that as one of the ballots used in your county at the last November election?

A. No, sir, I don't know that it is; it is something similar to that, though, I can say that.

Q. Look at the signature there?

A. That is a fac-simile of my signature.

Examination by Mr. Hendricks:

Q. I want to ask him a personal question——

Mr. Sweeney: Where were those ballots printed?

A. They were printed in Paducah, Charles M. Leeken Company.

Mr. Hendricks resumes: I will get you to state to the Board whether or not the first time I ever saw your stub-books was this evening when you came to me and told me that you had received a telegram that your wife was very sick, and you were compelled to leave, when you delivered that book to me and asked me to turn it over to these gentlemen?

A. Yes, sir.

Q. Ain't that the only time I ever laid eyes on it?

A. Yes, sir; I received a telegram this morning about 11 o'clock calling me home, and I carried that book to Mr. Hendricks, and would have left it with Mr. Hendricks had I not received another telegram in answer to one that I sent that I need not come home.

Q. Mr. McQuown never saw it in his life?

A. No, sir.

Q. And I never saw it except that time?

A. No, sir.

Examination by Judge Yost:

Q. Did I understand you to say that you had received a telegram that your wife was sick?

A. Yes, sir, I also gave that telegram to Mr. Hendricks; I suppose he has it in his pocket now to deliver to you gentlemen, if I delivered that book, or left that book —the stub-book.

Mr. Young: They are all alike—every book is alike?

A. I say that every book is alike, and I will file all of the books with the committee if it is your desire.

Judge Yost resumes: If you can file those books, I will ask you to do it; I have no desire to keep you over until to-morrow.

A. I will go and hunt up the County Clerk and bring them from the vault and file them with the committee.

Q. Is there a precinct called Ragland's precinct in your county?

A. Yes, sir.

Q. Who are the officers of election in Raglands precinct, if you remember them?

A. I don't remember them.

Q. Well, now, examine these signatures to that ballot and see if you know them to be citizens of Ragland's precinct?

A. Every one of them were citizens of Raglands precinct.

Q. Do you know the handwriting of any of the men—read the names?

A. J. M. McKenney, W. P. Rudd, Ira Rudolph and W. P. Crutcher. I don't know that that is their signatures, but they are citizens of that precinct.

Q. I will now say to you if you will get—do you know whether these men were the judges of election at that—the officers of the election of that precinct?

A. No, sir, I don't remember.

Q. I will now say to you if you will get to-night or leave the stub-book used at the Raglands precinct, you need not leave the others.

Gov. Bradley: We desire to file this ballot with the clerk—(referring to ballot exhibited to the witness).

A. I didn't say that was a ballot used at that precinct.

Q. I only asked you to write your name across it?

A. I will do that with pleasure.

Examined by Mr. James:

Q. If I understand you correctly, you do not state that that is one of the ballots used?

A. No, sir.

Q. You don't know whether or not that is true?

A. No, sir, I do not.

Q. You say you have no ballot yourself?

A. I haven't any.

Q. What precinct is it they desire you to file?

A. Raglands precinct.

Q. You say that that signature of yours there——

A. Is a fac-simile signature.

Q. But that could be gotten at the office of the printer that printed ballots for you at other elections?

A. Yes, sir.

Q. And put upon a ballot that was not used at the election, could it not?

A. I suppose it could—nothing to keep any person from doing it.

Q. The fact that it is a fac-simile signature does not indicate that you authorized it to be put upon that ballot?

A. No, sir.

Q. I see that the contestee in paragraph 30 says, "That the election held in the city of Paducah, in the county of McCracken, and in each and every precinct thereof, was not free and equal as provided by the laws and Constitution of this state, but were held and the votes counted and the results declared under police domi-

nation, force and duress, done for the purpose of overawing, intimidating, disturbing, and keeping voters in said precincts from going to the polls, and pursuant to said purposes did thereby keep many voters away from said polls who otherwise would have voted for the contestee, and said election for said reasons was not open, fair, free and equal, and should not be counted or considered." You live in the city of Paducah?

A. Yes, sir.

Q. County Clerk there of that county?

A. Yes, sir.

Q. State whether or not that is true?

A. It is not true.

Q. The police interfere there?

A. No, sir.

Q. Any force or fraud or intimidation used in those precincts, or any of them?

A. No, sir, none that I ever heard of.

Q. You never heard of such a thing?

A. No, sir.

Q. You were in the city of Paducah upon the election day?

A. I was.

Q. The city of Paducah has police there?

A. I went around to every poll on the election day.

Q. You state that that is absolutely untrue?

A. It is untrue.

Q. Was there any disturbance or any force or violence used there?

A. Not a disturbance in the election—not a single disturbance on election day in the city of Paducah.

Q. Not a single disturbance in the city of Paducah on election day?

A. Most quiet election I ever saw.

Q. That shows you haven't any Honest Election League down there.

A. No, sir.

By Mr. Sweeney: I will get you to state to the committee whether or not any of the ballots were returned with the stub-books that were returned to your office?

A. None returned to me.

Gov. Bradley: Were they returned to the commissioners?

A. I couldn't tell you about that.

Examination by Gov. Bradley:

Q. What are the politics of your printer down there?

A. I am inclined to think that he was a democrat. He had been that in previous election, was on the Democratic ticket down there for school trustee?

Q. He is a democrat yet?

A. I am somewhat doubtful about that.

Q. You doubt whether he is a Democrat or not?

A. Yes, sir.

Q. Did you doubt that when you got him to print your ballots?

A. Yes, sir, I did, and I will tell you why I got him to print the ballots. I had made a contract with the News Publishing Company to print my ballots, and Mr. Robinson sold his paper out just before the election down there to the Honest Election League, and after he went out of the newspaper business I went to Mr. Leeken as the only man I could get in my county to print my ballots, and I got him to print them.

Q. Then there was an Honest Election League in McCracken?

A. No, sir, not in McCracken; I think it is in the city of Louisville.

Q. Sold it out to the Louisville fellow?

A. Yes, sir.

Q. You say you think that?

A. Yes, sir.

Q. Do you know anything about it?

A. He changed his politics immediately after.

Q. You think he sold out because he changed his politics—that is all?

A. No, I say the paper changed its politics.

Q. You just think he sold out to the League—I understand you say you think this man sold out to the Honest Election League?

A. Yes, sir.

Q. You don't know anything about it?

A. Or to the Republican party.

Q. Sold out to somebody?

A. Yes, sir.

Q. You don't know anything about it?

A. Well, I only know what he told me.

A. He sold to Mr. Gates and Mr. Flournoy and Mr.

A. Yes, sir.

Q. When did he tell you that?

A. He told me that immediately after he made the deal.

Q. Whom did he sell to?

A. He sold to Mr. Gates and Mr. Flournoy and Mr. Mocko. Mr. Gates from Jackson.

Q. You mean he sold his paper—he didn't sell his principles?

A. I don't know about that; I couldn't testify to that fact.

Q. If it is his paper he sold out, it is all right.

Judge Yost: State where each one of those parties live?

A. Mr. Mocko lives in the City of Paducah, and Mr. Flournoy lived at Fulton at that time, and Mr. Gates lived at Jackson, Tennessee, and was in the railroad business there.

Gov. Bradley: Still with that information before you, that he had sold out to these men by name, you say on oath that he sold out to the Honest Election League in Louisville?

A. No, sir, I don't say that; I said I thought he did.

Examined by Mr. James:

Q. He asked you in regard to the politics of Mr. Leake the man that printed the ballots for you. I will ask you if it is not the general belief down there that Mr. Leake was for Mr. Taylor?

A. Yes, sir.

Q. Was it or not believed he was for Mr. Taylor?

A. Amongst the people I associated with.

Q. They asked you in regard to the sale of this newspaper, the News; I will ask you if Mr. Gates, the gentleman that bought it, is not an official or an employe or interested in the Louisville & Nashville Railroad Company?

A. I understand he is.

Objected to.

A. I don't know it of my knowledge.

Q. Mr. Flournoy, is he interested in it?

A. That is my understanding.

Objected to, and contestees move to strike the testimony out, which motion is sustained.

Q. Where did Mr. Gates live prior to the time this newspaper changed its political affiliation by reason of the change—

A. At Jackson, Tennessee.

Q. The paper prior to the time it sold out advocated the regular Democratic ticket?

A. Yes, sir, and has always.

Q. About what time was that sale made?

A. Well, I don't know exactly the time.

Q. How long prior to the election, you think?

A. I think the sale was made along in September, but I wouldn't be positive of it—in September or October.

Q. I will ask you if it is or not true that that paper had the regular Democratic ticket headed by William Goebel upon its head lines, advocating that ticket, until the sale was made to Mr. Gates, of Jackson, Tennessee, and after that, if it did not put up the name of his opponents?

A. Yes, sir.

Q. That is true. What was the consideration for that paper?

A. I don't know only what I heard about it.

Q. How many thousand dollars?

A. $22,000.

Objected to, objection sustained.

Re-Examination by Mr. Sweeney:

Q. I understod you to say that the paper ceased to be a Democratic paper simply because the gentlemen who had purchased it—its owners—declined to support Mr. Goebel; is that the reason you give for stating to this committee that it ceased to be a Democratic paper?

A. In my judgment, it ceased to be a Democratic paper when it refused to support Mr. Goebel and the regular nominees. It had supported Mr. Goebel before it was sold out; and it afterwards refused to support him.

Q. These gentlemen who purchased it were not for Mr. Goebel?

A. I think not.

Q. You are of the opinion that a man who saw proper not to vote for Mr. Goebel sacrificed his Democracy simply because he refused to support Mr. Goebel?

A. I think any man sacrifices his Democracy when he refuses to support the regular nominees of the party.

Q. Do you think a man abandons the principals of Democracy when he refuses to support any particular Democratic nominee?

A. If he is the nominee.

Q. Did not you notice that a great many people in this state, who are good Democrats, refuse to support Mr. Goebel?

A. No, sir; I do not know that there are any people who were Democrats, who did that.

Re-Cross Examination by Mr. James:

Q. This man Gates, was a non-resident of Kentucky?

Objected to; sustained

James A. McCane, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?
A. Brooksville, Bracken County.
Q. What office do you hold in that county?
A. County Clerk.
Q. Have you your stub books with you for the late election?
A. I have.
Q. Have you any ballots?
A. No, sir; I have no ballots.
Q. Will you please exhibit these stub books?
A. I will. (Witness produces a number of stub books.)
By Gov. Bradley: One of these books, I presume, will do gentlemen—Foster precinct.
The stub book for Foster precinct was filed as an exhibit.

Cross-Examination by Mr. James:

Q. Who printed these ballots for you?
A. Mr. H. W. Slolen of our town—Brooksville.
Q. What pound paper is that?
A. I could not say; I am not a paper man.
Q. I will ask you if it is possible for a man to see how a man has voted through this ballot?
A. I think not when it is properly folded; it is the same kind of a ballot I have always had printed for me.
Q. Did you vote one of these ballots?
A. Yes, sir.
Q. Could you see how you had voted after it was folded?
A. No, sir.

Re-Examination by Gov. Bradley:

Q. What do you mean by "Properly folded"?
A. When it is doubled. The way we folded our ballots was probably one that was, and then over this was probably, and once more I think. (Indicating.) I am not sure that is the way—whether it was folded four times or probably three. The stub is on the side in our ballots.
Q. You folded your ballots four times?
A. Yes, sir.
Q. Now suppose you fold it that way (indicating), could you see then through it?

A. I think not.
Q. Could you not see it if it was not folded at all?
A. No, sir. I did not see that.
Q. You did not notice to see whether you could observe any mark on this at all?
A. No, sir; I heard no complaint.

Re-Cross Examination by Mr. James:

Q. You heard no complaint about these ballots?
A. No, sir.
Q. I will ask you if the ballot is folded once if it is possible for a man to see the stencil through it?
A. I don't think it is possible.

Charles L. Gray, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?
A. Augusta, Bracken County, Ky.
Q. What precinct?
A. Central Augusta precinct.
Q. Were you there on the November election day last?
A. Yes, sir; I was.
Q. Did you vote in that election?
A. I did.
Q. Were you an officer in that election?
A. I was inspector.
Q. Inspector of the precinct you have mentioned?
A. Yes, sir.
Q. Did you see the ballots used there on that day?
A. Yes, sir.
Q. Please describe to the Board what the character of those ballots was, as to thinness or thickness, transparency, or anything of the sort?
A. They were very thin, and very transparent.
Q. Could you or not, see the stencil mark or not made by the voters from the outside of the ballots?
A. Very distinctly.
Q. In how many instances?
A. In almost all of the ballots; not all of them, an occasional exception where they touched them very lightly.

Cross-Examination by Mr. McQuown:

Q. What precinct did you say you were an officer at?
A. I was inspector at the central Augusta precinct.

Q. Who were the other officers there?

A. S. P. Keene—

Q. What was he?

A. Judge.

Q. Who was the other judge?

A. John C. Gray.

Q. Who was the clerk?

A. I do not remember just now; I will think of it and report it in a minute.

Q. You were inspector?

A. Yes, sir.

Q. You got in the poll after the voting ceased?

A. Yes, sir; except when I voted my own ticket.

Q. How was the ballot folded at that precinct?

A. I think it was folded three times, is my impression.

Q. When folded that way you could not see?

A. You could only see the stencil appear on top—when the stencil appeared on the top.

Q. You could not see the devices—the printing at all?

A. No, sir; not that I remember of.

Q. You could not see the devices on the ballot from the back of it?

A. I did not notice that particularly until I went to count the ballots; then they were very distinct.

Q. That is when you began to open them out; you could not see the devices and stencil marks either, when it was folded three times?

A. You could see it from the outside where the stencil came on top.

Q. You could not see the devices, and therefore could not tell how the vote was cast?

A. I do not remember about seeing the devices.

Q. You not seeing the devices, and not knowing under what device it was you could not tell how the vote was cast?

A. I did not think about noticing it. In fact the idea of the ballot being of unusual thinness never occurred until I went in to count the votes; then it was a very distinct proposition; and one there on the inside in the capacity of a judge or challenger who wanted to know and who looked closely, would have no trouble at all in seeing it.

Q. You were neither judge nor challenger?

A. No, sir.

Q. You did not know how the votes were cast from looking at them at the back of the ballot?

A. No, sir.

Q. Of your own knowledge you do not know what the Judges or Sheriffs did?

A. I could not know anything about that, being on the outside.

Q. I understand you to say you could not see the devices or printing through the ballot from the back?

A. Oh, yes; you could see it, but you could not tell what it was.

Q. You could not distinguish?

A. You could tell it was unusually thin.

Re-Examination by Gov. Bradley:

Q. You say you could not see the devices—did you know the locality of the devices on the ballot, how they were placed, which came first, which came second, and which came third?

A. No, sir; I do not believe I do.

Q. Where an individual did know how those three devices came on the ballot, could he, or not, look at the back of the ballot and tell from the print of the stencil under which device the stencil was placed?

A. Without the slightest trouble on earth. Anybody that knew could tell.

Re-Cross Examination by Mr. McQuown:

Q. You say this is unusually thin paper?

A. The ballot handed to me was especially so.

Q. What precinct were you in?

A. Central Augusta.

Q. Did it have any number?

A. No, sir; it had none.

Q. Just Central Augusta precinct in Bracken County?

A. Yes, sir.

Q. What are your politics?

A. Republican.

Dr. L. B. Plumber, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. Foster, Kentucky.

Q. Where is that, what county?

A. Bracken County.

Q. Did you notice the ballot that you voted on the day of the election?

A. Yes, sir.

Q. Describe the character of that ballot, as to the character of paper, and the marks that were on it—

whether you could see them, how you could see them, and so on?

A. The paper seemed to be of good quality, but rather thinner than we had been having there on former occasions; and after I had put the stencil mark on my ballot, I turned it over and could see the imprint of the stencil on the opposite side.

Q. Did you notice the order in which these designs—emblems were placed on the ballot?

A. Yes, sir; I think I did.

Q. Now which came first?

A. The Goebel Democratic ticket.

Q. What came next?

A. The Honest Democratic ticket, I believe is the way it read.

Q. What came next?

A. The Republican ticket.

Q. Knowing the position of these three emblems, the order in which they came on the ticket, could you or not tell from the appearance of this stencil mark through the paper, in looking at the ballot from the back of it, where that stencil had been made under which device?

A. I could, in case it was under the device that came on the outside fold.

Q. Could you see the devices through the ballot from the outside fold?

A. Yes, sir.

Cross-Examination by Mr. James:

Q. You say you could see where it was voted when it was stamped on the outside of the device?

A. No, sir, I didn't say that; I said, when it was stamped under the device, and the ballot was folded so that that device was on the outside fold, it could be seen.

Q. Would be on the outside?

A. Yes, sir.

Q. And that would allow the light to come in between the paper on the outside?

A. No, sir; just simply show through.

Q. Would not the light show through there—thin ballots, you say?

A. Yes, sir.

Q. You say you could not see any stencil marks after it was folded, except where it was put under a device which, when folded, came upon the outside?

A. I say if it is put under a device that would be on the outside, when the ticket was folded, that you could

see the imprint of the stencil through the paper, under that device.

Q. Could you see the device through the paper?

A. Yes, sir.

Q. You could tell what it was?

A. You could judge from the distance; you could tell what device it was by seeing its position.

Q. You say you could look through and see what the device was?

A. No, sir; I did not say that. I said you could not distinguish it. You probably could not distinguish—see the device this way.

Q. Suppose a man had gone into the booth and stamped under the Republican ticket and the ballot was folded properly, could you observe where it was stamped?

A. That depends upon the position—where that occupied.

Q. You said you knew where it was from the outside?

A. I never noticed when I voted my ballot whether that came on the outside or not. I just simply folded my ballot up and handed it to the judge. But the way they vote ballots usually in our precinct, I never saw any paper that was so thick they have had yet, that the imprint of the stencil would not show through, because they must usually—most people bring their ballots out folded once and hand them to the judge and the officials, and they fold them so they will go into the box.

Q. This paper filed by the County Clerk of Bracken County was the kind of paper you used?

A. I believe in quality it is. I do not believe it is as thick a ballot as we have had on several occasions.

Q. I am talking about the November election, 1899, what you did have—whether this exhibit filed by your County Clerk is the true character of the paper used in Bracken County?

A. I probably could tell you by looking at it.

Q. Show it to him. (The clerk hands the witness stub book heretofore filed as an exhibit by the County Clerk of Bracken County.) Is that the character of paper?

A. I don't know. This is not the stub book for my precinct.

Q. That is the only one we have filed here?

A. (After examining the stub book referred to.) I believe that is thicker paper than the paper they had at our precinct; I believe so; if I could see the other paper I could tell you.

Q. Did you hear the County Clerk of your county when he was on the stand here as a witness?

A. Yes, sir.

Q. You heard him say that the exhibit which he filed was the same kind of paper as that used in every precinct in Bracken County?

A. You bring me Foster precinct, and I will show you.

Q. Were you in here when the Clerk of Bracken County testified?

A. Yes, sir.

Q. Did you, or not, hear him answer in answer to questions propounded to him say that the exhibit filed by him was the same kind of paper as the paper used in Bracken County?

A. I would not be certain.

Q. This is the paper filed by the clerk?

A. Yes, sir.

Q. You think the ballot you happened to vote there that day was thinner than the paper in these stubs?

A. Yes, sir.

Q. You won't say you can't fold these so you could not see through it?

A. Yes, sir; under certain circumstances.

Q. What sort of circumstances?

A. A person making the imprint, with a certain amount of ink on it; where they put the stencil down they put too much ink on it, and it dampens the paper clear through it.

Q. Is not this a glazed paper?

A. Yes, sir; it probably is.

Q. What is your politics?

A. Republican.

Q. Do you hold any official position in the Republican party?

A. No, I have a commission as pension examiner in the United States service.

Re-examination by Judge Yost:

Q. Will you please tell the politics of the clerk of Bracken County?

A. My understanding is—(Objected to—) He is a Democrat.

James B. Marcum, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. What is your name?

A. J. B. Marcum.

Q. What is your profession and where do you reside?

A. I am a lawyer, and I live at Jackson, Breathitt County. I am very hoarse.

Q. Were you up there at the November election last?

A. Yes, sir.

Q. What precinct were you in?

A. I voted in precinct No. 1.

Q. Two precincts in town?

A. Yes, sir.

Q. Were you in only one of the precincts that day?

A. Precincts No. one and two, both vote in the Court House. I was in the hall there all day mostly.

Q. How was that election conducted there in those two precincts?

A. There was some disturbance there during the progress of the voting.

Q. What sort of disturbance was that?

Objected to, because it is claimed that that part of the counter notice had been stricken out.

Q. What is the number of those two precincts?

A. No. 1 and two.

By Gov. Bradley: Precinct No. 9 is stricken out in section 42. This is in reference to Jackson precinct No. 1 and Jackson precinct No. 2.

Q. Now, sir, I want you to give me, if you please, sir, the conduct at that precinct on the day of the election, running through the day on up until the count was completed at night?

A. I can not testify from personal knowledge on the subject of what occurred until after the polls were closed.

Q. What occurred before the count was finished and the polls were closed?

A. When the polls were closed I was in the Court House hall, and there was a number of men in there drunk—drinking, and had pistols. Some of them had them out. I remained there after the polls closed about half an hour. The officers of the election several times, some of them—Mr. Breck Coombs and Mike Robinson, especially these two.

Q. What officers were they?

A. Coombs was sheriff and Robinson was judge, I believe. I asked Mr. Coombs if they were about ready to announce the vote; if it had been about counted; he remarked, no, they were not, they didn't have to count them until they got ready. I told him all right. These parties gathered around the door in the hall where I was. I was there quite a while, and they were drinking and talking boisterously.

Q. Who were these people who were drinking and talking boisterously?

A. Democrats.

Q. How many of them?

A. I don't really remember. I can give the names of them: Ben Hargis, Albert Hargis, Hiram Hayes, Geo. Spencer, Kirk Jet, Sam Feilds, Jesse Fields.

Q. Was James Hargis there?

A. Yes, sir.

Q. What did they do with those pistols?

A. I was standing there pretty close to the voting room door, and the first I knew that any trouble was up, there was a colored man standing right behind me, on the foot of the stairway. Kirk Jet walked down the stairs—he seemed to come down from upstairs in the Court House—and he struck the negro in the head with the pistol and knocked him down.

Q. What did he knock him down for?

A. I don't know; the negro had not said a word, or done anything to anybody.

Q. Tell what then happened.

A. He fell fairly up against me. He was behind me and I heard him and just as I looked around he hit him on the head just above the ear; hit him with a large pistol. There was not a word said up to that time in the way of a fuss. Jet stumbled down off the stairs, and I saw him draw his pistol across to where I was. I went two steps across to a narrow hall which comes into the main hall, and he threw his pistol down and fired it kind of towards me, and the ball just passed my leg and struck in the floor in front of me. From that then I hurried out of the hall. I saw I was in a bad place. There were no Republicans in there except the darkie and myself. From that they commenced shooting and shot just as fast as they could.

Q. How many shots fired?

A. I don't know.

Q. What became of the Republicans that were around there when the shooting commenced?

A. There was only just myself and that darkie and possibly one other, Carle Salyers. I think he was in there when it began. He ran out and the darkie went out. I went out across the street about fifty feet from the Court House. I went back afterwards, and the darkie would not go back. I went back, and they were still in there; smoke in the hall—very smoky in there where they had been shooting. About the time I got back to the door of the voting room Mr. A. C. Carpenter came out.

Q. How did he come out?

A. It seemed like he came out in a hurry.

Q. Anybody after him?

A. I could not say, but he came out just as I entered the front door of the Court House. I stepped across the hall into the small hall; I saw the door close behind him.

Q. Did you see any pistol when he came out of that door?

A. Yes, sir; this crowd was in there, and I saw two or three pistols out.

Q. Did you see any pistol immediately behind Carpenter as he came out of the door?

A. No, sir.

Q. Who was this man Carpenter?

A. The Republican inspector.

Q. Did he go back after that?

A. No, sir.

Q. How long after that before the count was finished?

A. I don't know, I left there. He came out of that small hall and stopped there, and was talking to Mr. Jim Hargis, and I went up to him and asked him what he was doing out of there; and told him he ought to go back --(Objected to). He did not go back. I kind of took him by the arm and told him I would go back with him; I says you are entitled to be there, and I think they will let you in there. I kind of caught him by the arm as though we were going back, and when I did that Jim Hargis commenced to talk pretty rapidly and said, "You fellows have had your own way long enough, with your Bradleys and with your soldiers, and we are going to do the counting." I looked back in the hall—and I saw he was excited, and I tried to keep down any difficulty as much as I could. I think the crowd then began to gather up around us, and as they came up they began to draw their pistols, and Kirk Jet drew his and said, "Let me to them, I will settle with him." And when I saw that Carpenter and I both stepped out of the hall and kind of dodged around the Court House and got out of the way.

Q. Do you know James Tharp?

A. Yes, sir.

Q. What was he doing up there that day?

A. He was in jail.

Q. What was he doing in jail?

A. I don't know; he was in there on some charge.

Q. What sort of a charge?

A. I don't really know.

Q. Did he stay in jail?

A. They had him out and took him into the voting room; I saw him in the hall.

Q. Took him out and took him into the voting room?

A. Yes, sir.

Q. Anybody else in jail that day?

A. Yes, sir.

Q. Who was it?

A. They put Jack Little in jail, I think, and Tom Tracy.

Q. What did them in jail for?

A. I don't know; I saw them putting them in; I don't know how it came up; I don't know what excuse they had.

Q. Do you remember what the vote returns was in that precinct?

A. Yes, sir.

Q. What was it?

A. A hundred and eighty-one for Goebel — majority for Mr. Goebel.

Q. Do you know what the political standing of the parties was in that precinct?

A. I can only give my judgment.

Q. Taking into consideration past elections?

A. That precinct is Republican sometimes.

Q. Up to how much?

A. I think up to twenty-five.

Q. I will ask you if that precinct had been polled?

A. Yes, sir; I understand it had.

Q. You don't know anything about that of your own knowledge?

A. No, sir; not personally.

Q. Now, then, the other precinct—which one is this we have been talking about?

A. No. Two.

Q. Do you know what the return of the vote was in No. One there at the Court House?

A. No, sir, I don't remember; about twenty-five or thirty for Goebel—probably thirty; I do not remember exactly.

Q. Do you know from past elections what the vote in that precinct was?

A. It was not far from about what they returned it this time. That precinct has been cut up, and two precincts made out of it. It goes sometimes—I do not remember exactly what the Democratic majority in that precinct is.

Q. Did you know the clerk in precinct No. 2?

Q. What was his condition that night—that day?

A. I did not get to see him during the day; he was in the room, but I did not see him; I did not see him at all during the whole day. I did not vote in there.

Q. Do you know what the condition of K. C. Hardin, the Republican judge, was during that day?

A. No, sir, I did not see him, except I saw him come out of the voting room after the polls closed.

Q. As to the other precinct—do you know anything about that?

A. No, sir.

Q. I believe you are a Republican?

A. Yes, sir.

Q. Were the Republicans up there in that precinct for Mr. Goebel?

A. No, sir; not a single Republican for him that I know of. Some Democrats against him; four that I know of.

No cross-examination.

A. C. Carpenter, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. What is your name?
A. A. C. Carpenter.
Q. Where do you live?
A. Breathitt.
Q. Were you there at the election?
A. Yes, sir.
Q. Which precinct?
A. Jackson No. 2.
Q. Were you an officer of any sort there?
A. Challenger and inspector for the Republican party.
Q. Did you witness the count?
A. No, sir.
Q. What is the reason you did not?
A. I didn't have an opportunity.
Q. Why?
A. I thought it was go or do worse, and I thought I had better go.
Q. What was it?
A. There had been a good deal of confusion around the door of the voting precinct all day; they had not stayed at the fifty foot line all day, and there was a crowd up at the door.
Q. What sort of a crowd?
A. A drunken, riproaring, surging crowd, mixed up, all parties, all colors, sizes and shapes.
Q. All sorts of folks, and all drunk?

A. I did not say that—a good many of them drunk; a good deal of confusion all day. About four o'clock in the afternoon about the time the polls were closed, they commenced shooting out in the hall right in front of the voting room, and when the door was opened after the shooting stopped, the hall was cleared except one or two men I saw standing there. Mr. Cope, the sheriff of the county, came into the voting room and claimed to have credentials from the chairman of the Democratic party of the county as inspector for the Democratic party there. I had the credentials—the Republican credentials signed by the chairman of the Republican party, and I had exhibited them before Mr. Cope came in. Mr. Cope produced his to the Board, and one of the members of the Board objected to Mr. Cope's actions.

Q. On what grounds?

A. That he did not live in that precinct, and consequently could not be an inspector—the Democratic judge objected to him. I remember there was some confusion, and Mr. Cope was very drunk and could hardly stand up. They got up some argument about that, and Cope said he would go out if I did. I said I didn't know about that that I reckon he could go out; he said he would not go out unless they put them damn radicals out. I said, I didn't know about that, and they kept on jouring about that for about an hour. About dark—about five o'clock, they went out several times. Before this there had been liquor brought into the voting room—

Q. Who brought it?

A. Breck Combs.

Q. Who is he?

A. The sheriff. They had it setting on the table in the back part of the room, and when the voters would come in the voters would drink with the officers, and then the officers would drink with the voters; and I began to think I was getting in a pretty close place—getting pretty warm. Cope remarked that he would go out if they would put the damn radicals out. Mr. Combs, the sheriff of the election, went out into the hall of the Court House and came back and said "Alf"—that is what I am familiarly known by in the neighborhood—"I have been talking with some of the Republicans and Democrats"—he was the sheriff of the election—"And they have agreed to put you and Sherman"—Sherman Cope, sheriff of the count—"both out." I said, "I don't know anything about that, if Sherman wants to go it is all right; I didn't have nothing to say about him, but I am not going to go." I asked him who he had talked to, and he said the Demo-

crats and Jim Little—various ones of them, and they had concluded it was best, to keep peace, for them to put us both out. Sherman said, "I won't go without you put out these damn radicals, about all he ever would say. Well, I thought Sherman was a personal friend of mine, and he was drinking, and I asked him to go on out; I said, "You are so drunk you could not inspect anything." The Democratic judge said he would not count a ballot until Cope went out—unless he went out, and I asked him to go on out; and told him that Mr. Centers and Mr. Combs were both old experienced men in elections, and that they could look out for the interests of the Democratic party as well as he could; and they could probably get along without him. He said if I would get his hat he would go, and I did get it and he did go out. In a few minutes the door was opened— there was a side hall, and this door opened into that. Jim Hargis came back with him and put him in at the door and said, "Go in there, by God, and stay in there"—and he opened the door and shoved Cope into the room, and he stayed in there a while longer. Hargis came to the door and he called to me and says I want to speak to you. I was sitting across the room back from the door by the fire, and I said no, if you want to say anything to me, say it here. He said no, I want to speak to you privately. I hated to refuse a man that much courtesy, and I walked over to Mr. Hargis. He had his hand on Cope's shoulder—one hand, and he put his other hand on my shoulder, and about the time he put his hand on my shoulder he took his hand down from Cope and put his hand back and pulled out a forty-five—an awful big one. and hit me right up there, and I caught Cope—and the sheriff caught Hargis and caught it from his hand; and when they did that he shoved me back—some fellow shoved me back through the door and they closed the door behind me; and that was the last I was in there, and that is the reason I did not inspect the ballots. I went on on the outside and Cope came out with me. He had his pistol still in his hand; and there was a fellow standing there named Spencer, who had his pistol out, and I caught Spencer—I thought they were going to kill me—I caught him by the shoulder and I pulled him on out into the hall. He says, you came awful damn nigh getting killed—and I believed it too. Hargis says, "Let me see you a minute." I says if you want to see me let's go down the side hall here, and I left Spencer and the other Democrats and Walked around into the hall, and about the time I got there Mr. Jim Markum came in; and Marcum came and asked me why I was not in there.

A. I don't know what remark I made—what words I said, about going back; and he said something about going back with me—Mr. Marcum said something about going back with me. Hargus spoke up something, I don't remember just the exact word he used, and about that time the whole crowd came up, Kirk Jet, Alber Hargus, Ben Hargus, Hiram Hayes—these four, I remember their faces, came up with their pistols out, or had their hands on them. They did not have them out holsters; I think it was Mr. Marcum that they were after, and I told him he had better go and he agreed with me, and he went out of the side hall, and just as were going out Kirk Jet came up like that (indicating), and I told Mr. Marcum to run, he is going to kill you; and we went over to Mr. Crawford's store, and that is the last of my connection with that election.

Q. What was the usual vote in that precinct between Democrats and Republicans?

A. I don't know; it is very close; not very much difference in it.

Q. What was the vote that time as they returned it?

A. One hundred and eighty-one Democratic majority; I do not remember the number of votes cast.

Q. Were there many Republicans up there for Mr. Goebel, in that precinct?

A. I never heard tell of one.

Q. Any Democrats against him?

A. Yes, sir.

Q. How many?

A. I heard as many as six say they were against him in that precinct.

Q. I will get you to look at that ballot and say whether that is the sort of ballot you voted up there that day?

A. Yes, sir; we used similar ballots to that.

Q. Look at the name on the back of that.

A. That looks very much Mr. Taulbee's writing—like the way he signs his name.

Q. Is that, in your judgment, one of the ballots?

A. Yes, sir, I think it is.

Q. Who were the judges of that election in that precinct?

A. Mike Robinson and Hiram Centers.

Q. You were speaking about some whiskey being in there—I think you said this man Cope was drinking?

A. Yes, sir.

Q. What was the condition of these other gentlemen in there?

A. They got pretty full before I left; I don't know how full they got after I left.

J. B. Marcum recalled for contestee and examined by Gov. Bradley, deposed as follows:

Q. Please look at that ballot and see if it was a ballot that was printed in your county?

A. Yes, sir; that is very much like the ballots we voted on.

Q. Look at the marks on it.

A. That is Mr. Taulbee's handwriting.

Q. Do you know where those ballots were printed?

A. In our town, at the Hustler Printing office.

Q. Is that the same ballot that was used there that day; just like it, the same sort of paper is it?

A. Yes, sir.

M. S. Crane, a witness called for contestee, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. Where do you live?

A. I live in Jackson.

Q. Breathitt County?

A. Yes, sir.

Q. Were you there on the day of the election?

A. Yes, sir.

Q. I will get you to examine this ballot, and the signature of the clerk on the back—examine the paper, and see whether or not that is the same ballot that was used up there on that day.

A. Do you want me to tell all I know about that ballot?

Q. I asked you if that is one of the ballots that was used up there that day?

A. Yes, sir. That ballot was used—was taken from one of the stub books in the county.

Q. Were the ballots of that character that were used there?

A. Yes, sir; I took this ballot and examined the stub books by it; and they are all similar—the same kind of material as that.

Q. Did the stencil show through this when it was marked?

A. I did not notice my ballot when I voted.

Q. Were you in Jackson on the day of the election?

A. Yes, sir.

Q. What precinct did you attend?

A. Precinct No. 1 and No. 2, both vote in the Court House; No. 1 in the Circuit Clerk's office, and No. 2 in the County Judge's office; just a few feet apart—about fifty—

not more than seventy-five; one at one end of the Court House hall, and one at the other.

Q. Were you an officer of the election?

A. No, sir; I am county commissioner of the county—no election officer.

Q. Did you observe any of this shooting, or the ejection of Mr. Carpenter?

A. No, sir, I was in the Court House before the shooting commenced. The County Clerk had called me into his office not a minute before it began.

Q. What did you do when the shooting commenced?

A. When the first shot was fired the clerk and I was talking in there on some business; and we started to run out into the Court House hall; I reached the door, and got ahold of the door—there is a transom window over the door, and just as I took hold of the door, another pistol fired, and I saw the fire, and saw that it went through the glass in the transom window. And he says, "You had better not go out there, bullets have no eyes." While he was saying that the bullets began to come very fast, and I didn't go out.

Q. What was the usual Republican and Democratic vote in that precinct?

A. The largest Democratic majority that was ever given in that precinct before was seventy-five.

Q. What did they purport to give this time?

A. They purported to give Goebel 281, and Mr. Taylor 100.

Q. Were the Republicans up there pretty generally for Mr. Goebel?

A. They were as enthusiastic as I ever saw them.

Q. For Mr. Goebel?

A. No, sir; they were all for Mr. Taylor.

Q. I thought you got in a little wrong. How were the Democrats—were they very enthusiastic for Mr. Goebel in that No. 2 precinct?

A. I know of five that expressed themselves very strongly against Mr. Goebel.

Q. The others were enthusiastic for him, I suppose?

A. Yes, sir.

Q. Did you know who was doing this shooting?

A. No, sir.

Q. Well, at the time that those election officers were appointed, were there any officers appointed as Republicans who were Democrats?

A. Well, they appointed some men as election officers that I didn't know, and I objected to them being appointed simply because I didn't know them; and our district

chairman, in the precincts where they were appointed, told me that they—

Objected to; overruled.

Q. Were any officers of election there appointed as Republicans who were Democrats—understood to be Democrats by reliable men in their neighborhood with whom you talked?

A. Yes, sir.

Q. How many were there?

A. In Springfork Precinct, No. 11, I believe, is a number, I am confident of it; No. 11, they appointed four men there as election officers.

Q. Now, you say that in that Springfork Precinct, all of the officers of election were Democrats?

A. I say one of the best citizens in that precinct told me—

Objected to.

A. The Democratic commissioners appointed men that I objected to, and that I didn't know. I recommended the best citizens in that precinct for our election officers, and they refused to appoint them, and the appointed men that I didn't know, that I had never seen; and one of the commissioners told me himself, when I objected to them, "I don't know those men on there, but the Democratic chairman of this district recommends them, and I know they are all right." Then I can tell, if you will permit me—

Q. Now, who was this Democratic commissioner that told you that?

A. Mr. James Brophey.

Q. Told you he didn't know who they were, but he was appointing them on the recommendation of Democrats?

A. Yes, sir.

Q. And these were claiming to be Republicans?

A. Yes, sir.

Q. Now, did you undertake to investigate to find out the politics of these men?

A. Yes, sir.

Q. Now, what was the result of that investigation?

Objected to and overruled.

A. One of the best citizens in that precinct told me that all four of the election officers in Springfork Precinct was as strong for Mr. Goebel as Mr. Redwine, of our county, was. And a cousin of one of the men who was appointed, who was a Goebel Democrat, told me that Ples Davis, a man that I didn't know, said to a son of his, and also Davis told him, he saw him at town a day or two

or about the time he was appointed, told me that he was strong for Goebel. He was appointed on the recommendation—

Q. And the Democratic commissioner told you he appointed them on the recommendation of Democrats?

A. Yes, sir; the district chairman of the precinct.

Q. Well, sir, any other precinct now?

A. In Lewis Fork Precinct No. 9, they appointed two men there that I didn't know.

Q. Well, what were their politics?

A. One of them was a Republican, but he could not—he could just scarcely write his name.

Q. What did they appoint him; what sort of officer was he?

A. He was judge of the election; the Republican judge. And the man that they appointed as Republican sheriff of the election, I made inquiry concerning him, and people that knowed him in that precinct told me he was strong for Mr. Goebel.

Q. How many Goebel Democrats were there who were election officers in the Lewis Fork Precinct?

A. Three.

Q. And this one Republican. Now, in these various precincts that I have talked about, the Lewis Fork Precinct and the Springfork Precinct, were there competent Republicans there?

A. Yes, sir.

Q. Men of intelligence, and qualification, and character?

A. Yes, sir.

Q. I believe you stated you recommended that character of men?

A. Yes, sir.

Q. Now, do you know of any other precinct where there was anything irregular about the appointment of the officers?

A. Well, I can take up the various precincts; out of a total of forty-eight election officers—

Objected to.

Q. Now, what about the Lost Creek Precinct?

A. In Lost Creek Precinct they appointed one of the Republican officers I knew, but I didn't recommend him. Then they appointed another man that I didn't know; I never had heard tell of him.

Q. Now, what was his politics?

A. He was a Republican, but he was no scholar. I was informed and I noticed his signature when the stub books were turned in, and his signature was so bad I could scarcely read it.

Q. Do you remember anything about Troublesome Precinct?

A. Yes, sir.

Q. Who were the officers there?

A. Well, there was one man there I didn't know, but I investigated him and found him to be a Republican. I objected to his being appointed, simply because the law said I was to know him, and I didn't know him; but after I investigated the matter, I found both officers at Troublesome Precinct to be Republicans.

Q. What about the officers that were appointed there in the two Jackson Precincts?

A. In Jackson Precinct No. 1, there is where I got only one man; one man I recommended was appointed, and the other man was not. In this No. 2 Precinct, they appointed a man that Judge Day had appointed two years before that, and we made proof to Judge Day that he wasn't no scholar, wasn't a sufficient scholar to be an election officer, and he removed him and put on another man; and I objected to him being appointed on this ground, because he wasn't no scholar.

Q. What do you mean by "scholar"; could he read and write?

A. No, sir; when he wanted to write a letter, he would come to town to get someone to back and address it for him.

Q. Where was he?

A. In Jackson Precinct No. 2.

Q. What is his name?

A. Mike Robinson.

Q. Could not write?

A. Well, he can sorter scribble his name; and I understand from reliable parties there that he can hardly read the Constitution, if he can read it.

Q. Did you know Thomas Johnston, of the Crawford Precinct?

A. Yes, sir.

Q. Well, what about him?

A. Well, he is a very old man, and I am reliably informed that he can not see to do any good.

Objected to and sustained.

Q. Did you ever see this old man?

A. Yes, sir.

Q. How old is he?

A. Well, I should judge he is sixty or upwards, is my opinion of his age; he is white.

Q. Well, what sort of eyes has he?

A. They don't look good to me.

Q. What was the matter with his eyes?

A. Well, when I seen him he was complaining of sore eyes, and said his eyes troubled him a good deal.

Q. Well, do you know anything about that old fellow's education, whether he has any education, or not?

A. Well, he can write his name, and that is about all, I think.

Q. Well, in that precinct were there any Republicans who could write their names, and who were educated and competent?

A. Yes, sir.

Q. Is Mr. S. P. Cash here?

A. No, sir.

Q. What is the usual vote, comparative vote in that precinct of Crawford?

A. Well, that is a new precinct. This was the first vote that ever was made there.

Q. What about the Crockettsville, Precinct?

A. They appointed two men there as election officers that I didn't know.

Q. Who were they?

A. Asbery Spicer—Asbery Spicer was the Democrat—Jasper Arrowood and Hiram Sebastian, were the Republican officers.

Q. Well, what about them; what are their qualifications?

A. They are men that I didn't know. I investigated it after they were selected, I objected to their being appointed because I didn't know them.

Q. To what extent did you investigate them?

A. I seen good men from that precinct, and inquired as to their standing and qualifications.

Q. How many men did you inquire of?

A. I inquired of four or five; probably more.

Q. Were those men that you inquired competent to judge?

A. Yes, sir.

Objected to, sustained and exception.

Q. Now, sir, in that precinct, did you know Asbery Spicer, the Democratic clerk?

A. No, only by reputation.

Q. Well, is any indictment pending against Asbery—at that time?

Objected to.

Q. Did you object to him because of his character?

A. He was the Democratic election officer, and all I wanted was to name good Republicans; he represented the Democratic party, and I didn't object to the appointment of any of the Democratic election officers.

Q. I will ask you if this man is now under indictment for murder and log stealing both?

Objected to, sustained and exception.

Q. How was the vote usually in this Crockettsville Precinct?

A. Well, McKinley carried that precinct 3, and Major Sites, when he ran for Congress in 1898, it was one or two, I forget which, and this time it gave Mr. Goebel 86 majority.

Q. Well, had there been a change of sentiment up there in the Republican party?

A. Nothing, except there were a great many Democrats had expressed themselves for Taylor.

Q. How many did it give this time for Goebel?

A. Eighty-six.

Q. What about John Jones; who was he?

A. John Jones—now, those men that I had to inquire about were men generally that I didn't know; they were men that I am not acquainted with.

Q. What about him; was he a Republican or Democrat?

A. I didn't know the man personally, but he was reported to me to be a Democrat, after I got to investigating him.

Q. What extent of investigation did you make about him?

A. I asked two or three of his neighbors, that lived up there, good people, and they said he was for Goebel.

Q. In what precinct was he?

A. Lewis Fork Precinct No. 9.

Q. Was he appointed as a Republican?

A. Yes, sir; Republican sheriff.

Cross-examined by Mr. Hendrick:

Q. Mr. Crane, I believe you said you lived in the Jackson Precinct?

A. Jackson Precinct No. 1, in the corporation.

Q. Did you vote there?

A. Yes, sir.

Q. How many votes did you say were cast there for Taylor?

A. I don't know, but I know that Goebel carried the precinct 30, in No. 1 Precinct. In No. 2 precinct there was one hundred votes cast for Mr. Taylor, and 281 for Mr. Goebel.

Q. That gave Mr. Goebel 181 majority?

A. 181.

Q. 281 cast for Goebel?

A. Yes, sir.

Q. And 100 for Taylor?

A. Yes, sir.

Q. And you say 51 was the highest you ever knew it to go before?

A. Yes, sir. Now, it was 51 or 54, I disremember exactly which, but it was one of the two. I could not say positively, it was 51 or 54.

Q. Then it is a mistake about the precinct having gone Republican heretofore by a majority, ain't it?

A. Well, the precinct—I don't know—it is a new precinct; this is the second or third election that has been held in it.

Q. In both of the others it went Democratic, didn't it?

A. Yes, sir; but the biggest majority it ever gave was either 51 or 54.

Q. Then Mr. Marcum is mistaken when he says that it has heretofore been going Republican?

A. I can not say whether it has, or has not, went Republican. It is considered a Republican precinct.

Q. You say they only had two elections there, and both times it went Democratic?

A. I didn't say both times; the biggest majority was 51 or 54.

Q. Both times it went Democratic?

A. I don't know how it went the other two times, not positive.

Q. Once before it went Democratic, they gave 54 Democratic majority?

A. Once before I know it did.

Q. Then it don't always go Republican?

A. No, sir.

Q. Now, in the other precincts, you say the majority for Mr. Goebel was how many?

A. Was 30.

Q. These parties that you have spoken of, that were appointed there, were any of them appointed by you?

A. In No. 1 precinct there was one man appointed that I recommended.

Q. Was that the only one that was appointed?

A. No, I mean that I recommended.

Q. Were any of the others Republicans, that were appointed?

A. Yes, sir.

Q. Good men?

A. Yes, sir; there was some fairly good men.

Q. Honest and upright citizens?

A. Yes, sir; some of them were.

Q. You know no reason why they should not have served, do you?

A. In some instances they were all right—yes, sir; some instances—very few, though.

Q. Now, what officers do you know, Republicans, that ought not to have served up there?

A. Well, Mike Robinson should not have served in No. 2 Precinct, because he wasn't any scholar.

Q. What do you mean by not being a scholar?

A. I mean, he can't write; he just can write his name.

Q. In what capacity did he serve?

A. He served as judge of the election.

Q. All he had to do was to write his name; wasn't he acquainted in the precinct?

A. Then I will tell you another thing.

Q. Didn't he know the voters in that precinct?

A. Yes, sir; but then he wasn't what I consider a good citizen. He told me himself that he was so drunk when the vote was completed in that precinct that he never remembered going out of it.

Counsel for contestant moves to exclude that part of the answer that is not responsive to the question.

Q. I didn't ask you about his being drunk. Now, that is one that you have mentioned. What other Republican do you know?

A. I objected to K. C. Hardin.

Q. What was the matter with him?

A. Because we had better men.

Q. What was the matter with him; wasn't he a good man?

A. He is what we call a weak kneed Republican, and I wanted the best material we had.

Q. You wanted the strong kneed Republicans?

A. He is a poor scholar.

Q. Can he read?

A. Yes.

Q. And write?

A. Yes, sir.

Q. Didn't he know the people in the precinct?

A. Well, he was fairly well acquainted; we had men that were better acquainted than he was.

Q. Now, what other one; that is two?

A. Well, in Frozen Creek Precinct, they appointed George Talbee an officer, but that I didn't know—

Objected to.

Q. You don't consider a man incompetent, simply because you don't know him, do you?

A. Well, the law says that I shall know him. One of them told me he didn't know him in one instance.

Q. What is your occupation?

A. I am a railway postal clerk.

Q. Railway postal clerk for railroad?

A. On the Lexington and Eastern.

Q. Who owns that?

A. I don't know who owns it.

Q. The Louisville & Nashville?

A. No, sir; I don't think the Louisville & Nashville owns it.

Q. The Louisville & Nashville has got nothing to do with it?

A. Not that I know of.

Q. How long have you been a railway postal clerk?

A. I have been on that road ten years next October.

Q. You haven't had much opportunity to get acquainted with the people of that county, have you?

A. I have lived there in Jackson ten years next October.

Q. You run every day?

A. No, sir.

Q. How often?

A. I run half the time.

Q. Half the time?

A. Yes, sir.

Q. Every other day?

A. No, sir; I used to run a week on and a week off. I now run three days on and four off.

Q. You don't run quite half the time?

A. No, sir; I run half the time, excluding Sunday.

Q. Now, in ten years, a great many people would move into different precincts, that you would not see, isn't that true?

A. I made inquiry of the sheriff of the county, a man that served two years.

Q. I am talking about your personal knowledge and acquaintance?

A. Well, I think I am fairly well acquainted in the county.

Q. Well, do you know every man in the different precincts, or every Republican in the different precincts? I mean, personally know them?

A. No, sir.

Q. A great many in each precinct that you don't know, isn't that true?

A. In the different precincts there are several I don't know.

Q. How many precincts are there in the county that you have never been in at all?

A. There are two.

Q. Two that you never were in at all?

A. Yes, sir; two.

Q. Now, how did you get acquainted with them?

A. Well, I have been at Jackson there on public days, county court days, circuit court days, and mixed and mingled with the people. I have got property at Jackson, and in a great many instances I have dealt with them and I was connected with the firm of Jackson & Crawford in business, and bought ties, and I have hustled around for them when I was off of the road.

Q. When you did get acquainted with anybody from those two precincts then, it would be from casually meeting them in town; isn't that true?

A. Well, I met a good many of them in a business capacity.

Q. But as a matter of fact, there are a great many Republicans in all of the precincts that you never have seen; isn't that true?

A. Well, there are a few. In most of the precincts I think I know all of them; some of the voting places are thirty miles from Jackson—one anyway is about thirty miles from Jackson.

Q. Do you know who secured your appointment as commissioner?

A. County commissioner?

Q. Yes.

A. I was recommended by the county chairman.

Q. Republican?

A. Yes, sir.

Q. Has there been a college built there recently?

A. Yes, sir.

Q. A great many people come in there to get the benefits of that school?

A. Yes, sir.

Q. Doesn't that account for a good many votes in that precinct, that hadn't been in that precinct before?

A. They all vote in No. 1 precinct, those college people; but this year they have a new corps of teachers there, and I don't think there were any of them voted.

Q. I mean, since the last election; hasn't Jackson been growing, and new people coming in there all the time?

A. Yes, sir; but they all vote in No. 1 Precinct, the corporation of Jackson.

Q. Is that the precinct that gave the 181 majority?

A. No, sir; the county around Jackson is the one gave it.

Q. Hasn't the town extended, and people built out to the suburbs of the town?

A. It is a right nice little town; the corporation votes in one precinct, and the surrounding country around Jackson votes in No. 2 Precinct.

Q. Well, the vote has largely increased since the last election before, in the county?

A. I don't remember what the vote was there last time, but I think it has increased some little; I don't know how much.

Re-direct examination by Gov. Bradley:

Q. You say that there were 281 votes cast for Mr. Goebel in No. 2?

A. Yes, sir.

Q. Do you mean by that, that they were cast, or counted for him?

A. Counted, I mean.

John P. Prowse, being duly sworn and examined by Gov. Bradley, deposed as follows:

Q. What is you name, sir?

A. John P. Prowse.

Q. Where do you live?

A. I live at Hopkinsville.

Q. What office do you hold there?

A. County Court Clerk.

Q. Have you with you any of the ballots that were cast at the November election, 1899?

A. Yes, sir; I have some returned ballots.

Q. How many?

A. Well, I have got a right smart little pack of them; I really don't know how many.

Q. About how many?

A. I have got about three hundred, or the rise; something like that.

Q. Were those ballots counted?

A. Well, in No. 1 precinct—

Objected to.

A. No. 1 has a certificate.

Q. Has the other any certificate?

A. No, sir.

Q. Why hasn't it any certificate, do you know?

A. No, sir; I don't know.

Q. Were you present when the votes were counted?

A. No, sir; I was not.

Q. Who was present that is here?

A. At No. 1?

Q. You say there is one bunch of ballots there that is not accompanied by a certificate?

A. There are two bunches here from No. 1 that are accompanied with a certificate; there are others that are not accompanied by a certificate.

Q. Who was present when the votes were counted?

A. Feland.

Q. Is he here?

A. No, sir.

Q. Who was present when the commissioners counted the ballots?

A. I was present.

Q. Were those ballots counted by the commissioners when they were returned to you?

A. They were not.

Objected to.

A. They were in my custody, and I gave them to the commissioners. Hopkinsville No. 1 is with certificates.

By a Committeeman: Didn't the county commissioners keep a record of their proceedings?

A. Yes, sir.

Q. (Gov. Bradley resumes:) Have you got that record?

A. No, sir; the commissioners threw this precinct out.

Q. I understand, but I am not coming to that precinct now; I want to know about these other ballots, whether they were counted?

A. They were not.

Objected to.

By Mr. McQuown: Are you undertaking to prove the record now of the transaction?

By Judge Yost: We are undertaking to prove the fact by the ballots that they were not counted.

By Mr. McQuown: Prove the fact that they were not counted, by the ballots?

By Judge Yost: By the certificate on the back, and by the ballots.

By Mr. McQuown: Then you have a certificate accompanying the ballots.

By Judge Yost: Yes, sir.

Thereupon the Board adjourned until Saturday Jany. 27th, 1900, to two o'clock p. m.

Frankfort, Ky., January 27, 1900.

The Board met pursuant to adjournment.

John P. Prowse was placed on the stand, and his examination was resumed by Mr. Breckinridge as follows:

The last question, which was objected to by contestants, was withdrawn temporarily:

Q. We will withdraw that question temporarily. I hand the clerk official ballots of Hopkinsville election of November 7, 1899, precinct No. 1 and the certificate thereto, and asked you to make that book and the certificate, and the oath of office part of your deposition, if in point of fact it is that ballot book and certificate?

The Chairman: It ought to be filed. Let it be filed.

Q. Was this certificate part of your records of your office?

A. Yes, sir.

Q. Was this returned to your office?

A. It was.

Judge Yost continues the examination: I will now ask you to file as a part of your deposition the returned ballots from Hopkinsville No. 1?

The Chairman: These ballots were returned with the certificate?

Judge Yost: Yes.

A. The whole batch.

Q. I will get you to get your stub book for No. 8 and the returned ballots for No. 8?

A. I don't believe there were any ballots returned with No. 8.

Q. Have you No. 9 then?

A. No, ballots with No. 9. 13, 16, 18 and 20 are the only ballots I have.

Q. Get those?

A. They were just returned as spoiled ballots, no certificates returned with them.

Objected to; objection sustained.

Q. That is the case with all the precincts, no certificates returned with any of them?

A. Not a one.

G. R. Hamphill, witness, being duly sworn, and examined by Mr. Edelin, for the contestees, testified as follows:

Q. What position, if any, do you hold?

A. I am clerk of the Corporation Department, Secretary of State's Office.

Q. Please examine the certificate here shown you, and state if that was taken by you from the official records of the Secretary of State?

A. Yes, sir.

Q. On file with the Election Commissioner's returns?

A. On file in our office, with the Election Commissioners' returns of Hopkins County.

Q. Of what county?

A. Christian County.

Cross-Examination by Mr. McQuown:

Q. Have you got any other record there that came with it?

A. Yes, sir.

Q. What is it?

A. The vote of Hopkins County—of Christian County, certified to the Election Board.

Governor Bradley: I desire to file as testimony in this case the statement of the vote of the state, certified by the Secretary of the State, in the years 1899 and 1896.

The Chairman: Very well, let it be filed.

Paul M. Moore, a witness, being duly sworn, and examined by Judge Yost, testified as follows:

Q. Where do you reside?

A. Earlington, Ky.

Q. What business are you engaged?

A. I am publishing a newspaper there.

Q. What paper?

A. Earlington Bee.

Q. How long have you lived in Earlington?

A. I have lived there for 7 years—been doing business there for some 14 years.

Q. Mr. Bradley—not Governor Bradley—on a former day in this trial testified that an examination of the—R. C. Bradley, Bob Bradley, testified that on an examination of the stub books and the assessor's books he had discovered 166 illegal votes in your precinct. I wish you would state what examination, if any, you ever made about this matter, and what the result of that examination was?

A. I believe Mr. Bradley's statement was about 176 names.

Q. 176 I said—intended to say?

A. Which he stated were not to be found on the books of the county assessor, but were on the stub book of the poll at Earlington—Earlington precincts.

Q. Yes.

A. I will state that I made an examination together with three other gentlemen of the stub books, of the Earlington polling books as compared with our city records, and we were able to identify all but fourteen of the names that were on the stub book of the Earlington poll. The handwriting of the clerk at the Lake District in Earlington was very poor and could not be read except by the clerk himself, or some one who was well acquainted with his writing, and then it was necessary for them to have a thorough acquaintance with the people of the precinct. I will state further that this clerk was appointed clerk of that election over the protest—

Objected to; objection sustained.

Q. That is not in issue?

A. Well, then, with the aid of the clerk and three other gentlemen including myself who knew the people of the Earlington precinct thoroughly and were well acquainted with the handwriting of the clerk were able to identify all but fourteen of the names that appeared on that poll, which to the best of my knowledge and belief, all of those were residents of the precinct and legal voters. Further than that I know of three men who did vote at that election whose names we were not able to identify on the poll books. That brings the unidentified names, resulting from the poor handwriting of the clerk to eleven out of 176.

Q. You gave three names that I want to ask you about. Are those gentlemen here?

A. Two of them are.

Q. Who are here of those two names?

A. Warner Campbell and J. G. Sparrow.

Q. Who is the third man that was mentioned?

A. A man by the name of Cobert.

Q. What do you know about Mr. Cobert?

A. I don't know anything about him further than he is an engineer in the employ of the L. & N. Railroad on the Henderson Division.

Q. Where is his home?

A. I couldn't say. I am rather of the opinion that his home is in Howell, Ind.

Q. But the other two gentlemen are here to speak for themselves?

A. Yes, sir.

Cross-Examined by Mr. McQuown:

Q. Where do you live?

A. At Earlington, Ky.

Q. What is your business?

A. I am publishing a newspaper.

Q. Who were the other gentlemen that were with you in this investigation?

A. Mr. H. S. Corey, who was clerk of Lake precinct, Earlington; Mr. Dan M. Evans, of Earlington, and Mr. James R. Rash, of Earlington.

Q. How many of the names that you found upon that book were you enabled to identify yourself?

A. I couldn't say that definitely.

Q. You didn't know them all yourself?

A. I know most everybody in two precincts. I was unable to identify all of the names I mentioned for the reason of the bad handwriting.

Q. How many of them did you know, in point of fact?

A. I couldn't state. I said that with the aid of the clerk and these gentlemen that we identified all but fourteen.

Q. I didn't ask you that. I asked you how many there were that you could not identify yourself?

A. Well, sir, I believe I could state that I identified all but fourteen, practically so.

Q. Have you got a list of those that you did not identify?

A. No, sir; I couldn't read them is the reason I couldn't identify them.

Q. Have you got a list of those that you did identify?

A. No, sir; I brought no list. I could submit the list if I had time. I didn't bring them with me.

Q. You haven't got the list with you?

A. No, sir; I didn't bring it with me.

Q. What connection have you with the St. Bernard Coal Co.?

A. My father-in-law is the president of the St. Bernard Coal Co. I own no stock in the St. Bernard Coal Co. I worked for them for some years.

Q. That is a large company that operates there. How many men does it have in its employment?

Objected to; objection sustained.

Q. Has that corporation—has your father-in-law got any interest in the railroad?

Objected to; objection overruled?

A. I will state that if my father-in-law has any stock in the L. & N. Railroad I don't know it.

Q. The L. & N. handles the coal from your father-in-law's company?

Objected to; objection sustained.

Q. Where are these gentlemen that helped you to go over that list?

A. I presume they are at home.

Q. What were their names?

A. Mr. James R. Rash, Mr. H. S. Corey, Mr. Dan M. Evans.

Q. What business are they interested in?

A. Mr. Corey is a farmer; Mr. Evans is a clerk in the employ of the St. Bernard Coal Co.

Q. Clerk of the St. Bernard Coal Co.?

A. A bookkeeper.

Q. What is Mr. Rash?

A. Mr. Rash is a leading Democrat of the county, and the purchasing agent of the St. Bernard Coal Co.—merchant there.

Q. Brown Democrat, is he not?

A. Well, sir; I couldn't tell you. I made the poll of the Earlington precincts before the election, and we put him down as doubtful, not knowing whether he would vote for Mr. Goebel or for Mr. Brown. He never expressed himself.

Q. A leading Democrat but a doubtful one? What are your politics?

A. I am a Republican.

Q. What politics has Mr. Rash?

A. Mr. Rash is a Democrat.

Q. The other gentleman?

A. I will say Mr. Rash came very near being a candidate for Senator on the last Democratic ticket.

Q. How near did he come?

A. Possibly a member of the Board would know more about it than I do. He was mentioned for nomination.

Q. What is the politics of the other gentleman?

A. They are Republicans.

Q. What are the politics of these gentlemen, Campbell and Cobert?

A. I don't know Mr. Cobert's politics; Mr. Campbell and Mr. Sparrow are both Democrats.

Q. Do you know where they reside?

A. They reside in Earlington.

Q. Both of them?

A. Yes, sir.

Q. What business is Mr. Campbell?

A. Mr. Campbell is an L. & N. engineer.

Q. Cobert?

A. Mr. Cobert, who is not here, is an L. & N. engineer. Locomotive engineer.

Q. You say you print a paper at Earlington?

A. Yes, sir.

Q. What is the size of Earlington—population, I mean?

A. Earlington is a town—there was a census taken last April, and—a sworn census, sworn to on April 4th, 1899. That showed the town of Earlington had 2566 population. I have the books. I am also the City Clerk of Earlington, and custodian of those records, and I have the records here, and will submit them if required, showing that that town has 2566 population April 4th last.

Q. What was the vote at the Earlington precinct in the last election?

A. At the Earlington Precinct last election the vote was 679.

Q. Are there two precincts or one?

A. Two precincts.

Q. How was it divided?

A. Goebel, 191; Brown, 41; Taylor, 430; and other candidates for Governor 17.

Q. How was the vote in those same precincts the election before that?

A. In 1898?

Q. Yes, sir.

A. The total vote in the two precincts was 266.

Q. How was it divided?

A. Allen got 144, Fowler 53, James 5, Jolly 64; that was the race for Congress.

Q. Who was Allen and who was Jolly?

A. Allen was the Democratic nominee for Congress; Jolly was one of the Republican candidates.

By Mr. Breckinridge: Who was Fowler?

A. Fowler was the Republican nominee. Jolly was the independent Republican.

Q. (Mr. McQuown resumes:) How was the vote in 1896?

A. The vote in 1896 was 726 total.

Q. How was that divided?

A. McKinley, 344; Bryan, 336, and others 16.

Q. (By Gov. Bradley:) How much was that total?

A. 726.

Q. (Mr. McQuown resumes:) This time, how many votes did Goebel get this time?

A. Goebel got 191.

Q. How many did Taylor get?

A. Taylor got 430.

Q. Others scattered?

A. Yes, sir.

Q. How many?

A. 17.

Q. What is the name of your paper?

A. Might I state in comparison the vote of the county for this year?

Q. No, I will just asking you about that precinct. What is the name of your paper?

A. Earlington Bee.

Q. How many copies of that was taken and paid for by the L. & N. Railroad in this last campaign?

A. Not a one.

Q. By the other corporations?

A. Not a one to a single corporation, I am sorry to say.

Q. How many extra copies were you in the habit of circulating?

A. Well, sir, it has varied from time to time, I send out sample copies when I have an issue that I think might possibly get me subscribers.

Q. Didn't you have campaign editions and send out large numbers of your papers during the campaign?

A. No unusual large numbers last year.

Q. What do you call unusual?

A. Possibly the largest edition was, I think, 2200, or twenty-one or twenty-two hundred copies, the largest edition in 1899. The smallest did not come under seventeen hundred. The average for the year was exceeding 1800.

Q. When was it that you issued this largest edition, about what time?

A. The usual edition has been 1800, from eighteen to nineteen hundred; I couldn't state the time possibly—well, I have issued once or twice since the election.

Q. I was asking you preceding the election?

A. You can see from the statement I make that the circulation has not varied very much. I couldn't give you the dates exactly. Some weeks I would print eighteen hundred, sometimes 1850, and once or twice possibly two thousand. These extra copies I have usually sent to postmasters to be handed out to possible subscribers.

Q. Who handled the Republican funds at your precinct on the election day and previous to any election?

A. Unfortunately we had none except what was contributed to the county and state funds.

Q. How much was that?

A. I couldn't tell you. I contributed something.

Q. How much did the St. Bernard Coal Co. contribute?

A. It is impossible for me to state, I don't know.

Q. They did contribute?

A. Oh, yes. I say the St. Bernard Coal Co.—I want to qualify that. I don't mean it. Mr. Atkinson, who is the president, did contribute something to the campaign fund. He a lifelong Republican.

Q. How much was the Republican fund in that county used for election purposes?

A. I couldn't tell you. I can state definitely as to Earlington.

Q. How much?

A. None at all, according to my knowledge.

Q. Didn't you say that a fund was raised?

A. I said a fund was raised, but what we raised was contributed to the county and state fund. We needed no fund to carry on our election.

Q. How much was that?

A. At one time I sent as a committeeman from my precinct to the County Committee $55.00, I think it was, that was the first contribution.

Q. What was the next one?

A. That is all that passed through my hands. I couldn't say if any more money—

Q. Have you any knowledge of other moneys having been collected or sent and contributed by anybody for that fund, either state or county?

A. Our postmaster gave me, for the fund, at another time, that I remember, $5.00 that I think it was.

Q. What is his name?

A. Robinson. I will state, however, that that was not an assessment—a voluntary contribution.

Q. Who else did you collect from?

A. No others.

Q. How much, do you know, was contributed by others or collected by others in your county and used either in your county, district or in the state?

A. I couldn't state definitely from my own knowledge about any further contributions.

Q. Then give me as near as you can, if you can't state it definitely, state the facts as nearly as you can?

A. That is all I know of. No other money passed through my hands.

Q. Has the L. & N. a shop at Earlington?

A. No, sir; not now—not really a shop. The yards have been remodeled there and the shops have been removed. They have men in their employ there to look after and make light repairs on the cars, have a roundhouse.

Q. About how many employes have they there?

A. I really dont' know definitely in the shops; possibly twenty-five, maybe more.

Q. About how many men that run upon the road live there?

A. I couldn't tell you that.

Re-direct examination by Col. Breckinridge:

Q. What was the vote in 1897?

A. It was 559 in the two precincts.

Q. What was the vote in 1896?

A. I haven't it.

Q. What is the vote of that county?

A. The vote in the county in 1896 was 6021.

Q. How divided?

This testimony objected to.

A. I would like to state that the vote in the precincts is in harmony with the vote in the county for the four years.

J. D. Sparrow, a witness called for contestee, being first duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live?

A. Earlington, Ky.

Q. Where were you born?

A. Paris, Ky.

Q. How long have you lived in Earlington?

A. About ten years.

Q. That has been your home constantly for the last ten years?

A. Yes, sir.

Q. For fear of these gentlemen you had better speak in answer to this question, very low. What is your business?

A. Conductor on the L. & N.

Cross-examination by Mr. James:

Q. Conductor on the L. & N. Railroad, you say?

A. Yes, sir.

Q. Where did you say you lived?

A. Earlington.

Q. How long have you been living in Earlington?

A. About ten years.

Q. Where do you run from and to?

A. Earlington to Nashville.

Q. Did you ever live in Nashville?

A. No, sir.

Q. Did you ever vote in Nashville—

A. No, sir; I thought you said boarded, I never voted in Nashville in my life.

Q. How long did you board in Nashville?

A. Ever since I have been running on the road.

Q. Been boarding in Nashville?

A. Yes, sir.

Q. How much of your time do you spend in Nashville?

A. Very little.

Q. Do you leave Earlington one day and go to Nashville?

A. And return, yes, sir.

Q. Return to Earlington?

A. Earlington is my layover.

Q. You run into Nashville, and have a boarding place at Nashville?

A. Yes, sir.

Q. Do you know Mr. Martin, connected with the L. & N.?

A. The superintendent—yes, sir.

Q. Did you see him prior to the election?

A. Yes, sir; I seen him.

Q. Where did you see him?

A. In Mr. Dedons' office.

Q. Was he down to Earlington at any time prior to the election?

A. Yes, sir.

Q. Did you see him there?

A. Yes, sir.

Q. Did you talk ever talk with him?

A. No, sir; I never spoke to him.

Q. I will ask you if he was not down there in the interest of Mr. Taylor, seeing the L. & N. men, and corralling all the employes he could to get them to vote for Taylor and those he could not control for Taylor to get them to stay away?

A. No, sir.

Q. Ever have any conversation with him about it?

A. No, sir; none in way.

Q. Did you get any circulars during the election about the election?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Did you vote in Earlington before that?

A. No, sir.

Q. Where did you vote before that?

A. That is the first one I ever cast there; and the first vote I ever cast in my life.

Q. Never voted before?

A. No, sir; only for the President; I did vote for the President.

Q. The assessor down there, did he call on you for a list?

A. Yes, sir; I think so.

Q. You think so?

A. Yes, sir; I was assessed in Earlington.

Q. The county assessor I mean?

A. The town assessor, I believe.

Q. Did you say to him that you were a citizen of Hopkins county?

A. Yes, sir.

Q. You gave him a list?

A. I gave him my name.

Q Your name appears then on the assessor's books of Hopkins county?

A. Yes, sir.

Q. What was the assessor's name that took your list?

A. Mr. Barnett, and also Mr. Philips, I think.

Q. Where did you vote for President?

A. In Howell, Ind.

Q. You voted in Howell, Ind.?

A. That was where I was on my run; where I came to the end of the run.

Q. Didn't you state that you had never voted before in your life?

A. I stated that I had never voted before in my life before except for president.

Q. Did not you state a moment ago that you had never voted before in your life?

A. Only for President?

Q. Where did you cast that vote?

A. Howell, Ind.

Q. Where were you running?

A. Between Evansville and Nashville.

Q. You then considered Earlington your home?

A. I was an extra conductor, and considered my home in Earlington, and had my washing done there.

Q. Still you voted in Howell?

A. Yes, sir.

Q. Didn't you say you considered your home in Earlington?

A. I could not get to Earlington and I thought I had a right to vote, and I was going to make one for the president.

Q. You wanted to make one for the president?

A. Yes, sir.

Q. You say you considered your home in Earlington in 1896, and had your washing done there?

A. Yes, sir.

Q. And yet because you could not vote there you voted illegally at Howell?

A. I asked some parties if I had a right to vote there, and they said I did.

Q. And you went ahead and voted?

A. Yes, sir.

Q. And this year you voted in Earlington—in 1899?

A. Yes, sir.

Q. If you had happened to be at some other place, in some other county, in 1899, could not you have voted there as well as to have voted in 1896 in Howell, Ind.?

A. No, sir; I don't think I could.

Q. You don't think the same rule governs two votings?

A. No, sir.

Re-examination by Judge Yost:

Q. How did you vote?

A. Democratic.

Re-cross examination by Mr. James:

Q. You say you voted Democratic?

A. Yes, sir; I did.

Q. Where?

A. In Earlington.

Q. Who did you vote for?

A. Mr. Brown.

Q. And you call that Democratic?

A. Yes, sir.

Re-examination by Gov. Bradley:

Q. How did you vote in 1896 for President?

A. For Bryan.

Warner Campbell, a witness called for contestee, and examined by Judge Yost, deposed as follows:

Q. What is your trade or occupation?

A. Locomotive engineer?

Q. For what company?
A. Louisville and Nashville.
Q. Where is your home?
A. Earlington, I suppose.
Q. How long has that been your home?
A. I have been running in and out of there for nine years.

Cross-examination by Mr. James:

Q. What did you say your name was?
A. Campbell.
Q. You say you voted in Earlington in 1896?
A. No, sir.
Q. Vote in 1897?
A. No, sir.
Q. Did you vote there in 1898?
A. No, sir.
Q. You say you did vote there in 1899?
A. Yes, sir.
Q. You say you have been living in Earlington how long?
A. Been running in and out of there nine years?
Q. Where did you run?
A. At present between and Howell, Ind.
Q. Where did you vote in 1896, if you voted?
A. I voted in Nashville.
Q. Where did you vote in 1897?
A. Didn't vote at all.
Q. Where in 1898?
A. Not at all.
Q. You say you run from Earlington to Howell, Ind.?
A. I am at present, and have been for the last three years.
Q. Where is your family?
A. I haven't got any.
Q. Have you a boarding place?
A. Yes, sir; one at each end of the road.
Q. Where were you running from in 1896?
A. Between Earlington and Nashville.
Q. And had a boarding place at each end then?
A. Yes, sir.
Q. Boarding at each end of the line?
A. Why certainly.
Q. And yet you chose to vote in Nashville then?
A. I did.
Q. You did vote in Nashville then?
A. Yes, sir.

Q. How long ago has that been?
A. In 1896.
Q. That is less than nine years ago?
A. I was running in and they—
Q. You stated you had been considering Earlington your home for nine years?
A. No, sir; I beg your pardon—running in and out of Earlington for nine years.
Q. You were running from Earlington to Nashville in 1896?
A. Yes, sir.
Q. You had a boarding place at each end of the line?
A. Yes, sir.
Q. And you voted in Nashville in 1896?
A. Yes, sir.
Q. At this time you were running between Howell, Ind., and Earlington, Ky.
A. Yes, sir.
Q. And you chose to make Earlington your voting place?
A. Why certainly.
Q. Although you had as much time in Howell as in Earlington?
A. I had my layover in Nashville when I voted there.
Q. Did you lay over in Howell, Ind.?
A. I had a little bit.
Q. Did you ever vote in Howell, Ind.?
A. No, sir.
Q. You say you are an L. & N. railroad employe?
A. Yes, sir.
Q. Conductor?
A. No, sir.
Q. Did you ever vote in Kentucky before?
A. I don't think I ever did.
Q. Never before, except at this election?
A. No, sir.
Q. State to me what is your occupation?
A. Locomotive engineer.
Q. On what railroad?
A. The Louisville and Nashville Railroad.
Q. You came direct from Earlington here, did you?
A. Well, yes.
Q. I mean to testify in this case?
A. I did.
Q. Did you buy a through ticket from Earlington to Frankfort?
A. Yes, sir; and return. Do you want to see it?

Q. Did you pay for it?

A. I think I have a receipt; I don't remember just exactly—$6.78.

Q. You say you have got a receipt?

A. Yes, sir.

Q. Let me have it.

Witness hands receipt to attorney.

By Mr. James: This reads, "Received of Warner Campbell six and 78-100, for round trip from Earlington to Frankfort. R. T., 424. E. M. Orr, Agent.

Q. Why did you take this receipt?

A. Because they would not give me a pass and I expect to get it back.

Q. You took this receipt from the L. & N. Company in that way, expecting that you would get your money back?

A. No, sir.

Q. That is your expectation?

A. No, sir; if I had been coming on my own private business I would have taken the receipt in the same way.

Q. You took the receipt with the intention of getting your money back?

A. Who would not get it back if he could. That was my own private affair and I took the receipt,

Q. I hope you will get your money back, and I think you are right?

A. I hope so.

Re-examination by Judge Yost:

Q. What is your business?

A. Engineer.

Q. For what company?

A. The Louisville and Nashville?

Claude Chinn, a witness called for contestee and being duly sworn and examined by Col. Breckinridge, deposed as follows:

Q. What is your residence?

A. Lexington, Ky.

Q. What office do you hold there?

A. County clerk.

Q. How long have you been county clerk?

A. Five years.

Q. You are now serving your second term?

A. Yes, sir.

Q. Did you deliver the ballot boxes to the various sheriffs of the election?

A. I never delivered them to the sheriffs, to some of the officers of election. They came for them and I took receipts for them.

Q. To whom did you deliver the ballot box for what is known as the Athens precinct, No. 13?

A. Delivered it to Mr. Willis Stivers.

Q. What office did he hold?

A. I think he was judge?

Q. Of the election?

A. Yes, sir.

Q. You know whether he was also constable in that district?

A. I think he was.

Q. In that ballot box was there the usual stub book and ballots for that precinct?

A. Yes, sir. And it came back as it went out.

Q. Had any votes been cast, or any of the ballots taken out, when it came back?

A. Not a one.

Q. Was there any evidence of any sort that any election had been held at Athens?

A. None whatever.

Q. Any certificate of any sort?

A. No, sir.

Q. Any explanation made to you as to why the ballot box was returned, and the ballot book without any ballots being extracted?

A. They were returned like they went out.

Q. How long after the election?

A. When I saw the box—it never was turned back to me. It was brought to Lexington and put in the Lexington jail; and brought from there the day the commissioners met and turned over to them. The box was not turned over to me; it was turned over to them.

Q. You don't know how it got in the Lexington jail?

A. I do not.

Q. To whom did you deliver the ballot box and the stubs and ballots for precinct No. 4, known in Fayette county as Bell's School House precinct?

A. I do not remember. I did have a list of it. I made them sign for the ballot boxes.

Q. Was it returned in Bell's School House?

A. Yes, sir.

Q. What condition was it returned in?

A. There wasn't any votes cast there?

Q. No ballots taken out?

A. No, sir. I will explain that to you; these boxes are returned to the clerk. He is supposed to lock them up, and not open them. He turns them over to the county commissioners. After they get through with them they are turned back to the county clerk; so I never saw the contents of any box until after the county commissioners got through.

Q. Were there any ballots taken out of it, or any evidence that there had been any election in Bell's School House Precinct No. 4?

A. No, sir; none there.

Q. Any certificate of any sort?

A. Nothing at all.

Q. Do you know Athens precinct, No. 13, what its political complexion is at this time?

A. I can tell you the last election held there; it went Republican.

Q. When was that?

A. When Owens and Gale ran.

Q. How many did it go Republican at that time?

A. I could not say.

Q. What about the political complexion of No. 4 Bells School House?

A. It went Republican.

Q. At this last election?

A. Yes, sir.

Q. How much?

A. I think the commissioners book will show. I am not certain; I never brought any stubs; I was not summoned to bring them.

Q. You do not recall?

A. No, sir.

Q. Do you know what was the registered vote of the city of Lexington?

A. There were three registrations.

Q. I mean the whole registered vote of the city of Lexington prior to the November election, as shown by the regular registration and the supplemental registration?

A. At the regular registration in the city there was 5634; and the supplemental registration taken before me as County Clerk was 353.

Q. How much do these sums added together show that the registration was just prior to the election in 1899?

A. I have not added them—5,987.

Q. Do you know what the entire vote of the city of Lexington was at the November election, and what is the

difference between the registered vote and the cast vote?

A. I brought the registration books down to show for themselves; and I also brought the commissioners books. The registration books will show the number of registered voters in the city of Lexington. We have no registration in the county. And the commissioner's books show the vote that every man received in the city of Lexington and in the county.

Q. What was the aggregate vote in the city of Lexington?

A. I do not know; I will have to look to get that for you. The registered vote in the city of Lexington was 6477, and in the race between Goebel and Taylor in the city and county together was 6815.

Q. We are asking now about the vote in the city of Lexington.

A. I don't know.

Q. Have you not got the books here that will tell?

A. I think so. This show the total vote. I think it was about 4400 or 4500.

Q. Your recollection is 4400 or 4500 was the aggregate vote?

A. Four thousand and something, yes, sir.

Q. Your recollection, do I understand, Mr. Chinn, is that the total vote cast in the city of Lexington was between 44 and 45 hundred?

A. In that neighborhood, yes, sir.

Q. Did you know anything about the politics of the election officers who actually held the election at the various precincts in the election on Novemeber 7th?

A. Pretty near all of them.

Q. What were they?

A. You mean the majority of them?

Q. Yes, sir?

A. Democratic.

Q. Do you know how many were Democratic?

A. No, sir.

Q. In how many precincts?

A. Pretty near all of them.

Q. Do you know any precincts in which there were two Democratic officers and two known Republican officers; and if so, which one?

A. I think there were some, where they were supposed to be equally divided, but I could not call them personally.

Q. Was there any precinct where there were no Republican officers?

A. I could not say.

Q. (By Gov. Bradley) In precinct No. 16—C. H. Norris, Louis G. Gooch, T. A. McLaughlin, J. B. McLaughlin?

A. Two Republicans and two Democrats.

Q. Who are the two Republicans?

A. Gooch—the two McLaughlins are Democrats, and the other man a Republican.

Q. Lyman Beecher Tood, J. B. Ryan, B. J. McNamara and John J. McKenna.

A. One Republican and three Democrats. That is to the best of my knowledge.

Q. Do you know who the officers were at any precinct?

I. I think they were the ones.

Q. Take this precinct—R. W. O'Neil, M. Burke, T. P. Farrell, and Pat Mooney—do you recollect these men as officers of election?

A. Yes, sir.

Q. What are their politics?

A. Read them to me. R. W. O'Neil is a Democrat; M. Burke is a Democrat; John J. Farrell is a Democrat and Pat Mooney is a Democrat.

Q. I will get you to say whether you recognize these gentlemen as officers of election: T. L. Kimbrough, Tom J. Ready, J. R. McConnell and J. E. Battaile?

A. Three of them I know. I do not know about the other one. Three of them are Democrats. Call them out.

Q. Kimbrough?

A. He is a Democrat.

Q. Ready?

A. He is a Democrat.

Q. McConnell?

A. He is the man I don't know.

Q. Battaile?

A. Battaile is a Democrat.

Q. Then in 16, 19, and 22 you state there were three Democrats and one Republican. In precinct No. 23: Harry Barbour, C. W. Rogers, Harry Stough, A. J. Meiler?

A. I know two of them; I know Rogers and Stowe are Democrats.

Q. What about this man Barbour?

A. I could not say.

Q. Precinct 25: C. W. Longmeyer, Herman Troast, William Rennick, and W. C. G. Hobbs. Longmeyer?

A. Democrat.

Q. Troast?

A. Republican.

Q. Rennick?

A. Democrat.
Q. Hobbs?
A. He is a Democrat.
Q. Precinct No. 28: J. McD. Ross, D. Mucci—a dutchman, D. O'Rielly, Garret D. Welsh?
A. Call them over.
Q. Ross?
A. Democrat.
Q. Mucci?
A. I don't know what he is. He passes for a Republican.
Q. O'Rielly?
A. He is a Democrat.
Q. Welsh?
A. Democrat.
Q. Precinct No. 30: James J. Hennessy; what is he?
A. I would not like to say.
Q. Jesse A. Hall?
A. I don't know what he was.
Q. John Gleason?
A. Democrat.
Q. You don't know the other two?
A. I would not say for sure.
Q. Have you any fixed impression on the subject?
A. No, sir.
Q. About those you don't know?
A. No, sir; I know them but I don't know their politics.
Q. No. 31: James Clark, John Jenkins, John Cassidy and Faust Foushee?
A. I think they are all Democrats.
Q. 32: George Roberts, J. B. Delaney, C. Lane, and John F. Doyle?
A. The first man I don't know how he is; the others are Democrats.
Q. Did you know Michael Youchum in your county?
A. Yes, sir; he lived in the county.
Q. Was he one of the election officers appointed?
A. Yes, sir; I think so.
Q. How old a man was he?
A. I expect he is eighty, maybe more.
Q. Was he alive when the election came on?
A. I could not say whether he is alive now or not.
Q. Did he act?
A. I think he did.
Q. Now here is another: C. D. Huston—do you know C. D. Huston?
A. No, sir.

Q. Do you know William Holmes, Senior?

A. I know old man Holmes, yes, sir.

Q. How old is he?

A. I know he is a right aged man.

Q. As much as seventy?

A. I expect he was.

Q. Did you know John Young?

A. I don't think I know him.

Q. Do you know whether these men were appointed as Republican officers of election—these two first named, Youchum and Holmes?

A. I know Youchum and Holmes were, yes, sir.

Q. What precinct did he vote at?

A. I voted at 21.

Q. That is in the city, I believe?

A. Yes, sir.

Q. Were you at the other polling places during the day?

A. No, sir; I will explain to you why I was not. They had all my men as officers of election and I had to stay at the office, only when I went to dinner and when I voted.

Q. I will ask you who did you vote for at the last election?

A. For Bill Goebel and the Democratic. I never voted anything else in my life, and I voted open ballot when I voted it, too.

Q. (By a member) Mr. Chinn, you were a candidate at the election in 1897?

A. Yes, sir.

Q. What was your majority in Precinct No. 13 at that election? Athens?

A. I do not recollect; we had a pretty good majority there.

Q. The best of your recollection?

A. I have no way of fixing it.

Q. Was it 156?

A. Somewhere in that neighborhood. I guess you know how we got it?

Q. You got it honestly, didn't you?

A. I would not like to answer that.

Q. That precinct had the same territory then as it has now?

A. It hardly has any fixed territory out at Athens.

Q. I mean, have the lines of the precinct been changed, the boundary been changed since 1897?

A. They change them so much I could not say.

Q. You keep the record of the county court of Fayette county?

A. Yes, sir; but I did not look at the changes; and I do not think any man in Fayette can tell the lines of the precincts.

Q. Did not the Democratic ticket carry Bells School House, No. 4 in 1897?

A. Was that when Humphries ran?

Q. When you were a candidate?

A. I did not carry it; Henry Boswick did; it was mixed, this man Berry beat Joe Humphries there, and it was Joe Humphries own precinct; but Henry Bosworth was the candidate for sheriff and he carried it. It was his precinct.

Q. Did not you carry it by a small majority?

A. I don't think I did; I think I was beat eleven votes. The election there, that last one, I don't remember.

Cross examination by Col. Young.

Q. When did you come to Frankfort?

A. I have been here a number of times.

Q. This last time?

A. Came to-day.

Q. Did you come from home to-day?

A. Yes, sir.

Q. Were you at home yesterday?

A. I was.

Q. And home to-day?

A. Yes, sir.

Q. How long had you been here at that time?

A. I think I was summoned the first day this board met; and have been here four or five different times. I had a sick wife and they said to me that they would let me know when they needed me; they promised to telegraph me.

Q. Were you here the day the army of occupation came in?

A. These gentlemen that came in with their guns?

A. I was here day before yesterday.

Q. You took part in this meeting out here?

A. I did; I took very little part in it though.

Q. What part did you take?

A. I signed those resolutions.

Q. When was the first you saw of these gentlemen assembling?

A. If you will let me I will tell you just where I went that day.

Q. You can tell the whole story.

A. I had a package to deliver to Mrs. Judge Sneed.

I got off the train and went to deliver this package; a party came to me—a friend of mine—

Q. Give the names as you go along?

A. Mr. Charlie Gribbins told me they wanted me up at the capital building. He is a reporter for the Leader. I went up there to this meeting, and they asked me to sign those resolutions. I read the resolutions—I read them twice, and I saw or thought I saw, there was nothing that anybody could object to, and I signed them and would do it again; and that is all there was to it.

Q. You are a Democrat—Democratic official?

A. Am I a good Democrat? As good as any in Kentucky.

Q. You spoke a little while ago of Democrats; as Judge Yost assiciously says there are many kinds of Democrats in these last days?

A. I will explain that—

Q. I am not asking you about this. What do you call a Democrat?

A. I don't know what to call them now. If a man did not use the same kind of tobacco and drink the same kind of beer as another man they say he is no Democrat.

Q. Tell us what kind of beer you drink and what sort of tobacco you use?

A. I was the same kind of Democrat you were in 1860 and 1862.

Q. And you have hung to that?

A. I have done that.

Q. You knew that this gentleman who asked you to come up there was a reporter on a republican paper?

A. He is a friend of mine, and has been coming down here with me every time I came.

Q. You knew he was a reporter on a Republican paper published in the city of Lexington?

A. Why certainly.

Q. And that the paper on which he is reporter is published by the Republican collector district in the Lexington district?

A. Yes, sir.

Q. Now, did you think it was Democrats or Republicans that wanted you up there?

A. I knew who it was that wanted me—why certainly I did.

Q. You knew who was coming?

A. When he told me.

Q. Is that the first you knew who was coming?

A. That is the first I knew there was any crowd or anybody in the town—yes, sir.

Q. This reporter then of a Republican paper came up here and told you you were wanted?

A. He came down with me to the city, and I got separated from him, as I told you, taking this bundle off. They asked for me, and I went down and signed the papers.

Q. Where did you first see the crowd that came in that day?

A. I saw them when I came down St. Clair street, coming up to the capital.

Q. How many did you see?

A. Well, I suppose there was from eight to twelve hundred.

Q. Did you know any of them?

A. Yes, sir.

Q. How many?

A. I didn't look; I knew a few of them.

Q. Well, how many?

A. I could not say.

Q. Ten?

A. Oh, yes; I knew fully ten—yes, sir.

Q. Twenty?

A. Well, I could not say, Colonel, how many I knew. There were several people that I did know. I saw Judge Hazelrigg there for one.

Q. Did he have a gun?

A. Well, I don't believe I seen but two guns since I have been to Frankfort.

Q. Did those fellows have guns?

A. I never saw the guns.

Q. Did you go up in the court house yard with them?

A. When I came up I went in the Secretary of State's office, signed that paper, read them over, and I left there.

Q. Now, answer my question; did you go up in the yard with those people?

A. No, sir.

Q. Were they in the yard when you came?

A. They were in there halloing in front of the capital building.

Q. What were the halloing about?

A. I don't know.

Q. Did they have any insignia or badges of any kind?

A. I saw a few of them with white badges on.

Q. Did they have any name on them?

A. I think they were Taylor badges.

Q. Did they have any pictures on them?

A. I think they had Taylor's.

Q. Did they hallo for anybody?

A. They were halloing for somebody to speak when I walked up.

Q. Who did you see there?

A. I saw Judge Hazelrigg.

Q. He was not a member of that crowd?

A. No, sir; I didn't say he was.

Q. Did you see any pistols around there?

A. I never saw but two pistols while I have been in Frankfort; one of them belonged to Ethelbert Scott, who was killed the other day. I will take that back, when Judge Bullock and Jim Rodgers, the Circuit Clerk, and I were going home, we saw one party at the depot with an old brass pistol and a tin cup in his hand; that is the only one I saw.

Q. When was that?

A. The train left here at four thirty-five; I suppose it was about ten minutes before train time.

Q. Did you hear discharged any fire arms while you were here?

A. No, sir.

Q. Did you see any tents in Capital Square?

A. I never saw a tent; I saw parties bringing tents late in the evening there, from, I suppose, the armory up the street here, coming down in the capital yard, passed them.

Q. Who were they, carrying those tents?

A. These men were packing them.

Q. Were they the same men that you saw coming in here?

A. I don't know whether they were the same men.

Q. Did they look like residents of this particular locality, or some other locality?

A. I could not tell a fellow by his locality.

Q. Don't you know the men that live in Frankfort by their dress and all?

A. I have very little acquaintance in Frankfort.

Q. Are they men that you ordinarily see around Frankfort?

A. I will tell you; I didn't know these men.

Q. You said a little while ago that you did know some of them?

A. These men packing these tents?

Q. Yes, sir.

A. No, sir; not packing the tents.

Q. Were they part of the crowd that you saw in the State House yard?

A. I could not say whether they were or not.

Q. Where were they carrying these tents to?

A. I was going out, and they were coming in the yard with them. I went on to the train, and I didn't see where they put them.

Q. How many did they have?

A. I suppose there were probably twenty or thirty of these men; some had poles, and some had tents.

Q. How many tents do you think they had?

A. In the squad I saw, I don't think altogether they had over six or eight; I don't know.

Q. Were you here from the time that you met with these men at eight, until four o'clock in the afternoon?

A. No, sir; I was up town.

Q. After you resoluted, did you come back?

A. Oh, yes, sir; I came back.

Q. How many times did you come back?

A. Oh, I was here—I don't know whether it was once or twice.

Q. Where did you sign these resolutions?

A. Right opposite the Auditor's office in the building over here.

Q. Right in the Secretary of State's office, wasn't it?

A. No, sir; we were not in the office.

Q. Well, in the hall?

A. Yes, sir.

Q. The entree sole, so to speak?

A. Yes, sir.

Q. In the hall in the Secretary of State's office?

A. I signed at that post, as you go in first.

Q. Don't the Governor's office open into this hall?

A. I think there are two doors there.

Q. Answer that; you are a frank man; just frankly answer?

A. Yes, sir; I think it does.

Q. Who wrote those resolutions?

A. I think Finley; I am not sure.

Q. Who?

A. I think Finley; I would not be certain.

Q. Finley?

A. Yes, sir.

Q. Do you know Finley?

A. I do.

Q. Was he the man that was Republican Secretary of State a little while ago?

A. Yes, sir.

Q. Did he seem to have anything to do with these men?

A. I didn't see him with the men; I only saw Mr. Finley when he had this paper and asked me to sign it.

Q. Did you see Mr. Finley in connection with these people out here?

A. I think he made some remark to them; after we signed this document, he probably made some remarks to them.

Q. Who else orated to them on that occasion?

A. I think Mr. Sharp made some remarks.

Q. What Mr. Sharp?

A. Steve Sharp.

Q. Where does Mr. Sharp live?

A. In Lexington.

Q. How long has he lived there?

A. He came there soon after the war. He was raised out about Athens; he was raised in Fayette county.

Q. Do you know how these men got to town?

A. I don't know any more about that, sir, than you do. When I got here, I was summoned here. As I told you, I was in the habit of coming every other day, and I would ask Col. Breckinridge or some of the counsel, whether they thought they would need me, and if they didn't I would go home. When I came here, I didn't know anything about a crowd of people coming.

Q. Did you get any of the rations that were served to these distinguished citizens on that occasion?

A. No, sir. I stayed up here on St. Claire street.

Q. Do you know how they were fed that day?

A. No, sir.

Q. Do you know how their wants were provided for, in any way?

A. No; I would not suppose they got much.

Q. Do you know where they got the little they got?

A. No, sir; I do not.

Q. You say there were about twelve hundred?

A. I think between eight and twelve hundred.

Q. Do you know where they put their arms?

A. I didn't see any arms—didn't know they had any. They must have come in before I came here.

Q. Who appointed you on that committee?

A. Well, now, I could not tell you.

Q. Well, were you standing in the crowd?

A. I was sent for, as I told you, Colonel, and come here. I had been out hunting Judge Sneed to deliver a package to his wife, and this party came after me to sign those papers, and I went immediately up, and did sign —stood around there a while, and went up town, and back again.

Q. Were they written, or typewritten?

A. They were typewritten; and I read them, as I told you, twice before I signed them, and I didn't think there was anything objectionable in it for a jury, or any party; if there had been different names signed.

Q. Did you mingle with this crowd at all that visited us on that day?

A. No, sir; I did not.

Q. Did you hear any conversation between them?

Objected to and sustained.

Re-direct examination by Gov. Bradley:

Q. I believe you stated that your politics agreed with Col. Young's in 1861?

A. Yes, sir.

Q. Were you a Confederate soldier?

A. I was.

Q. Now, this man that came to deliver this message to you, who was a reporter for a Republican newspaper, what were his politics?

A. He has always been a Democrat.

Q. What sort of Democrat, Goebel Democrat?

A. Well, now, I don't know whether he voted for Goebel—he voted for Bryan.

Q. Were you for Goebel, in good faith, for Governor—vote for him in good faith?

A. Well, now, I don't hardly like to say that, because I was in a position that I felt like I ought to vote for Mr. Goebel.

Q. You voted for him because he was the nominee, was that it?

A. Yes, sir.

Q. And you did vote for him?

A. I voted, and voted an open ballot.

Q. Well, Mr. Chinn, how does it happen that you were in favor of those resolutions that you have signed?

A. Well, sir, I thought it was a good thing, and no harm done.

Q. Why did you think it was a good thing?

A. I thought the country demanded it, and needed it.

Q. Did you think Mr. Goebel had, or had not been elected?

A. Did I think he had, or had not been—well, I think Taylor was elected.

Q. Was that the reason that you were in favor of those resolutions?

A. Yes, sir; precisely.

Wm. F. Dumeyer, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Mr. Dumeyer, where do you reside?

A. Louisville, Ky.

Q. In what precinct and ward do you reside?

A. Twenty-second precinct of the Twelfth ward.

Q. Were you at your voting place on the day of the last November election?

A. Yes, sir.

Q. In what capacity, if any, official capacity?

A. Well, I was there all day, and appointed inspector —Republican inspector.

Q. Republican inspector?

A. Yes, sir.

Q. Did you remain in the polls during the count of the vote?

A. No, sir; I entered the polls at four o'clock——

Q. Why didn't you remain in them; explain the whole matter?

A. I entered the polls at four o'clock, and as I entered I saw Chas. Schrieber, the Democratic judge, go to the door and call some one, and when he turned to come back from the door, I saw Officer Tully stood at the door and Ben Gregory entered the polls.

Q. Ben Gregory a policeman or officer of any kind?

A. No, sir.

Q. What was Tully's office?

A. Policeman.

Q. Go on now?

A. Then I presented my credentials to the election officers, and they argued and talked, and refused to acknowledge them, and they began to argue among themselves.

Q. What credentials do you mean?

A. As inspector.

Q. Republican inspector?

A. Republican inspector.

Q. Who gave them to you; who were they signed by, do you remember?

A. Alf. Davis.

Q. Was he the chairman of the Republican County Executive Committee?

A. Chairman of the Republican County Executive Committee.

Q. Well, go on.

A. Well, they squabbled, and Tully finally suggested

that they take a vote on it, and they didn't vote, and finally the Clerk and the Sheriff threw me out by force.

Q. Out of what?

A. Out of the polling place.

Q. Out of the room?

A. Yes, sir.

Q. Well, did you remain out?

A. I had to remain out.

Q. Go on and tell all that happened there without any further questions?

A. I could not get in any more, they threw me out.

Q. Did you go back and try to get in any more?

A. No, I didn't try to get in any more after that.

Q. What time did you go back?

A. I returned about half past five.

Q. Well, what were they doing then?

A. I saw the ballots burning out in the street, and the sheriff of the election was requested to announce the vote, and he said the vote was 160 for Goebel and 80 for Taylor, and he says, "That is all;" and I waited for the Republican judge, Mr. Newbill——

Q. Well, what did he say the vote was?

A. And we asked him what the vote was.

Q. What did he say the vote was?

Objected to and overruled.

Q. Go ahead, Mr. Dumeyer?

A. Well, he announced the vote, as far as it had gone, he said the vote had not been completed, but as far as the vote had been counted, they had counted 80 for Goebel and 74 for Taylor, and I think 16 for Brown.

Q. Said the vote really was 80 for Taylor, 74 for Goebel and 16 for Brown?

A. As far as they had gone, but the vote hadn't been completed.

Q. How did you say it was?

A. 80 for Taylor, 74 for Goebel and 16 for Brown; I was wrong at first, I want to correct myself. There was never any returns made for that precinct.

Q. Who was Ben Gregory, Mr. Dumeyer?

A. Well, he claimed to have credentials signed by Hambrick.

Q. Did he go in?

A. Yes, sir; he went in.

Q. What are his politics?

A. Well, I don't think he is much of anything; he is a bum around town.

Cross-examined by Col. Young:

Q. Now, Mr. Dumeyer, you are a Republican?

A. Yes, sir.

Q. You know there are two factions of Republicans in the city of Louisville?

A. No, sir.

Q. Ain't the Hambrick party and the Davis party there?

A. No, sir.

Q. Don't you know that there were two factions of the Republican party, one known as the Hambrick and one known as the Davis faction?

A. There is a man by the name of Hambrick that claims something, I don't know what it is; I never considered him as a Republican.

Q. Don't you know that the courts have decided, Judge Toney had decided that the Hambrick faction was the legally constituted representative of the Republican party?

A. I saw something of it.

Q. Well, then, you did know something of that?

A. I didn't know about it; I heard about it.

Q. Were you in the convention at Louisville, the Republican convention?

A. No, sir; I never engage in politics.

Q. Didn't you know that Gov. Bradley had urged the sitting of at least a number of the Hambrick faction, in the city of Louisville?

A. I can't say anything about it; I never attended any meeting whatever.

Q. Now, the other man that came, came with a certificate or credentials from somebody who claimed to be a Republican, and they admitted him without any question at all, and when you came with additional credentials, they refused you admission?

A. They called him in; they threw me out.

Q. Well, you had no right to be in there unless you had proper credentials.

A. Yes, sir; I had credentials signed by the proper party, representing the proper party.

Q. That was a question that these judges considered and determined against you, wasn't it?

A. I don't know; I think it was a prearranged matter.

Q. Well, be that as it may, they heard something, and considered it, and determined the other man was the true Republican, and then they told you you could not stay in?

A. No, he was no Republican.

Q. They said so?

A. No, they didn't.

Q. They decided it?

A. No, without any decision they threw me out.

Q. Well, he claimed to be a Republican?

A. I don't know.

Q. Didn't they have a discussion of the matter between themselves?

A. They were squabbling; there was no intelligent discussion whatever.

Q. Well, what did they say; you say it was a squabble—let's see what a squabble is?

A. They were all talking together, you know, everything mixed up; you could not tell what any of them said.

Q. You didn't hear anything that any of them said?

A. I could not hear anything distinctly, because I could not make out their conversation.

Q. Well, what were they talking about?

A. First one thing and then another. While I was in there a man by the name of Seaboldt presented his credentials also as a Brown inspector.

Q. Well, did he get in?

A. And he was reading this mandamus of Judge Toney's to them——

Q. Well, he got in, didn't he?

A. No, sir; they put him out the same as they did me.

Q. Did he ever come back any more?

A. No, sir.

Q. They didn't have any militia there to put him in, did they?

A. No, sir.

Q. Now, as I understand you, there arose a dispute among these election commissioners, they argued the question, they decided that Mr. Gregory, whoever he was, was entitled to the Republican representation, and to be the Republican representative in that district, and put you out?

A. I guess that is what it amounts to.

Q. And that is all it amounts to?

A. Yes, sir.

Q. (By a committeeman): Is that a Democratic precinct or Republican precinct?

A. There is a small Democratic majority there, I believe, usually.

Q. Was that precinct thrown out by the Louisville Election Commissioners, or not?

A. It was never counted; there were no returns from it at all.

R. H. Bibb, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live, sir?

A. 226 Seventeenth street.

Q. In what precinct and ward?

A. Thirty-seventh precinct of the Eleventh ward.

Q. Were you at your voting place at the last election?

A. Yes, sir.

Q. How many Republicans were present at the count of the vote?

A. How is that?

Q. How many Republicans were present at the count of the vote?

A. Well, I really don't consider there was any, but me.

Q. Who were the officers of the election?

A. There was myself—now, I don't believe I can think of all the names. The clerk was Charlie Briner, and the sheriff was Gustave Henry.

Q. Who was Gus Henry?

A. Well, he was put in there as a Republican, but he voted for the Democratic inspector.

Q. What was his business is what I mean to ask you?

A. Oh, he was sheriff.

Q. I mean, how did he make a living; what did he do?

A. The gentleman works for the city, they told me. I never heard anything to the contrary, but he worked for the city.

Q. Who was the Republican inspector at that precinct, Mr. Bibb?

A. The Republican inspector appointed by Alf. Davis was a fellow by the name of Slater.

Q. Was he admitted?

A. No, sir.

Q. Who acted as the Republican inspector?

A. A Democrat, from the city employ.

Q. In the city employ?

A. Yes, sir.

Q. What was his name?

A. Pat Donnelly.

Q. Pat Donnelly, a Democrat, and in the city employ, acted as Republican inspector?

A. Yes, sir.

Cross-examined by Col. Young:

Q. Do you know Mr. Patrick Donnelly?

A. Yes, sir.

Q. Does he live in the same district or precinct with you?

A. Oh, yes, he liver right close to me.

Q. Where does Pat live?

A. Right around the corner on Lytle street.

Q. Who was the Hambrick inspector?

A. He was.

Q. Mr. Donnelly?

A. Yes, sir.

Q. What were you doing there?

A. I was judge there.

Q. Any question on your republicanism?

A. No, sir.

Q. Clean, pure, clear article, is it?

A. Yes, sir.

Q. So you were there to look after things?

A. Yes, sir.

Q. Any wrong done there?

A. Sir?

Q. Any wrong done anybody there?

A. Well, no, I didn't see any wrong done.

Q. The vote counted?

A. The vote was counted.

Q. Counted fairly?

A. It was counted fairly, but then I didn't see the names on the ballots; I was tallying. Gus Henry, he was the Republican that kept the count.

Q. Well, you have no reason to think it wasn't counted properly, have you?

A. Well, I don't say that; I could say it was counted no other way but properly. I didn't know nothing about that, because I didn't count them.

Q. You could have seen if you had wanted to, couldn't you?

A. Well, if I had taken that pains, I could not have tallied. There was only myself; I had to tally, or look at the votes, and he was in there as a Republican, but he voted the Democratic challenger in.

Q. Well, you made an honest tally, didn't you?

A. Yes, sir.

Q. And that result that you tallied was certified?

A. Yes, sir; that was the result.

Henry T. Snyder, being duly sworn and examined by Judge Yost, deposed as follows:

Q. Where do you live, Mr. Snyder?
A. I live in Louisville.
Q. In what precinct and ward?
A. 7th precinct of the 1st ward.
Q. Were you at your voting place at the day of the last November election?
A. Yes, sir.
Q. Did you have any official connection with the carrying on of the election?
A. I was judge.
Q. Judge of the election?
A. Yes, sir.
Q. What are your politics, Mr. Snyder?
A. Republican.
Q. Were you acting as Republican judge?
A. Yes, sir.
Q. I wish you would state to the Board what occurred there during the day; how the election was conducted?
A. Well, the election went off tolerably well during the day; it went off smooth. Of course, there was a few little wrangles that didn't amount to any great amount, until about time to close the polls. Then the inspectors came in. Well, the challengers we had in with us all day. We had one Republican challenger, and one Democratic challenger; they remained all day. When we closed the polls, why, they went out, and inspectors came in, and the Republican inspector was refused by the Democrats in there. They put in an inspector that had Hambrick credentials.
Q. What were his politics, and who was he?
A. His intention was to represent them as a Republican; he is a Democrat, and his name is Lynch.
Q. What does he do?
A. He is a fireman, in the Louisville Fire Department, belongs to No. 10 in our Louisville Fire Department. He was a Democrat, acting as a Republican Inspector under Hambrick credentials, that is what he came in there for. Then they got up sort of a wrangle; I wanted all of them to remain in there, that made, I believe, four; I was in favor of the other three remaining in there, I thought they were entitled to stay there—I was not in favor of him; so they voted me out on it, and there was no Inspectors at all stayed in there.
Q. Now, who had signed the credentials for the Inspector that they didn't allow in

A. For the Republicans?

Q. Yes.

A. Well, this man Lynch, his credentials were signed by Mr. Hambrick and Mr. Hall.

Q. Did you see the signature?

A. Yes, sir; it was a stencil signature.

Q. Stencil—what do you mean by stencil signature?

A. mean it was typewritten, and put down like a stencil.

Q. Put on by rubber plates?

A. Yes, sir.

Q. How long did he remain in the polls?

A. About five minutes.

Q. Go on and tell everything that occurred.

A. All went out—all the inspectors, and the election officers remained in there.

Q. No inspectors were in during the count?

A. No Inspectors were in during the count. After that we undertook to count. We started to count, and it seemed like there was only me and a fellow named Sinkhorn had ever acted in the capacity of election officers before, and they could get no system, they could not get started to counting right. They wanted to count every vote, you know, scratched ballots and all, as they went along, and I tried to get them straightened out. I told them then for some of them to come around and pass on the ballots, and those that we could count, they could go ahead and tally in any way they saw fit, and after we got through we would straighten them out and count them. So Mr. Brucker, the Clerk, he come over with me and I taken the ballots out of the box and laid them on the table, and he looked at them and he would call them —if they were Democrats he would call them straight Democratic ballots, unless there was a vote for some Republican on there, then he would call it a scratched ballot, and that went over then to be counted for each man that was voted for on the ticket. Sometimes three parties would be voted for on one ticket, on one ballot. While I was noticing along during the count, Mr. Sinkhorn was tallying, and during the count I seen him miss a Republican vote once or twice, and I also seen him mark one vote in the same place twice, making two votes in one mark; I called his attention to it, and he corrected it, and I thought it didn't make any difference, we could go over them anyhow, and really I didn't consider it the count anyhow, but when we got through with the ballots he went to the door and announced the vote. Now, I disremember exactly what that vote was, but I think it

was Taylor 136 and Goebel 137; that is my recollection about the vote. In the meantime Mr. Knopf had figured up the vote that he had counted, and he had figured up the total vote cast and compared it with the votes that was cast during the day, and footed up with the poll-book, and it would not tally out by eleven votes, and he told them there was something wrong.

Q. Who was that that did that?

A. Mr. John A. Knopf; and Mr. Sinkhorn and Mr. Brucker contended that the vote was correct. I told them it would not make any difference, we would go over it anyhow; we all wanted to be satisfied; if it was correct it was all right, we would go over it and give every man everything that was coming to them. They refused to have anything to do with the count; they said they had counted it. I told them if we sent the returns in that way it could not be counted at all; that that would show a fraud, or something; that I wasn't satisfied, and that I didn't think it was done fairly and honestly, and I was anxious to go over it. So Mr. Sinkhorn, he went out and had a conference with the Captain of the Police that was on duty there that day.

Q. Who was Sinkhorn?

A. He was a Democratic judge.

Q. What was his profession or occupation?

A. He is a fireman.

Q. Fireman?

A. Yes, sir; he came back and said he would not count; and Brucker, he would not count either, they would neither of them count. I said if they would not count, that I would; I was going to count them for my own satisfaction, and they could just set down there and watch me. So they sat down, and I don't know whether they watched me, or not, but I went over the votes, and I sorted them out. There was five piles of them; there was the straight Republican vote, the straight Democratic vote, the Brown vote, the Prohibition vote, and the Socialist Labor vote, and then I laid what we called the scratched ballots over to themselves, and I called them as we went along, and Mr. Knopf tallied them, and when we got through they tallied up with the book exactly, and they said they would have nothing more to do with it.

Q. What was the result of that count?

A. The result of that count was, Mr. Goebel 71, and Mr. Taylor 161, Mr. Brown 11, Prohibition ticket 1, Social Labor ticket 2, and Humphrey Marshall 1.

Q. How many votes did Stafford get in that precinct?

A. Stafford got 158 votes, and Letterle 65.

Q. Letterle 65?

A. Yes, sir.

Q. Who was Stafford, and who was Letterle, and for what office were they candidates and being voted for?

A. Well, sir; Stafford is a doctor living in the First Ward, and was the Republican nominee for Representative.

Q. From that ward?

A. From that ward; and Mr. John Letterle was the Democratic nominee from that ward, or is supposed to be in the same ward, and now holding a seat in the House of Representatives.

Q. Now, state whether or not that vote was ever counted by the County Commissioners?

A. That vote was counted by the County Commissioners—yes, sir; at first.

Q. Now, state the facts in connection with that.

A. They passed on the motion, and that precinct was counted as we had turned it in. Now, mind you, before that count was half through, they all stayed there, and we stayed there until eleven o'clock, and Mr. Sinkhorn went to the door the Captain of the police force called him to the door, and he went to the door, and he said "You had better count that vote," and Sinkhorn came back and he said "Well, boys, I am ready to count that vote." I said "Very well, you sit up there at the table, you claim you are tired, I will do all the work, I will lay the ballots all up in front of you, all I ask you to do is to pass on the ballots, and count them. He said "I am satisfied with your count, and we will just go over the scratched ballots;" he says "Your count is correct." Then we went up to make the tally sheet.

Q. Who did you say it was that said he was satisfied it was correct?

A. Mr. Sinkhorn, and Mr. Brucker, both; and Mr. Sinkhorn, also, when we got through, went to the door and announced it the second tome.

Q. Announced it this way, the way you have given it last?

A. Announced as we took it last. After that they put on their coats and started to go away, and I said "Hold on there, we have to make out a commission," and they refused to sign any other sheet, except they said they would sign the sheet on the back of the stub-book. We had the tally sheet, and as I thought it was signed, but it was not. We had the tally sheet made out, and the certificate on the back of the stub-book he said he

would not wait, would not have anything to do with that, we could put the vote down for Governor and Lieutenant Governor, and Representative and they would sign that.

Q. Which they did?

A. Yes, sir; the vote was counted first, and afterwards reconsidered and thrown out.

Q. Reconsidered by whom?

A. By the Commissioners; it was reconsidered by Mr. Hoertz.

Q. And thrown out?

A. And thrown out.

Q. Do you know upon what grounds it was thrown out?

A. Well, sir; I could not say that I do.

Cross-Examined by Col. Young.

Q. You know Mr. Sinkhorn, don't you?

A. I have never seen Mr. Sinkhorn to know who he was until registration.

Q. Mr. Sinkhorn is a fireman in the City of Louisville, you say?

A. Yes, sir.

Q. Well, that is no discredit, is it, to him personally?

A. I didn't think so—no, sir.

Q. Now, I will ask you, Mr. Snyder, if this vote was not gone over then, and tabulated, and the result announced, before any discussion or quarrel arose about it?

A. Oh, no, I had called Mr. Sinkhorn's attention to it during the tally of that vote.

Q. He did go to the door and announce it?

A. He went to the door and announced it without instructions from anybody whatever.

Q. Well, the vote was completed, as he claimed?

A. Yes, sir.

Q. He claimed and Mr. Brucker claimed that the vote was completed?

A. No, Mr. Brucker never claimed anything of the kind; he made no claim.

Q. Who was the other Judge?

A. Mr. Sinkhorn was the Judge, and I was the other Judge.

Q. And then who was the Clerk?

A. Mr. Brucker.

Q. And who was the Sheriff?

A. Mr. Knopf.

Q. Now, the vote was completed, and was announced?

A. Yes, sir.

Q. And then you insisted there must be another count;

and in the meantime the ballots had be either scattered or laid on the floor?

A. There was nowhere else to lay them.

Q. And you picked them up and then made this count for yourself?

A. Yes, sir.

Q. After the other vote had been announced at the door, as required by law?

A. Yes, sir.

Q. Then Mr. Sinkhorn and this gentleman told you, that having announced the vote, it having been counted, that he would not be a party to a second count of the vote, didn't he?

A. Yes, sir.

Q. After these ballots laid upon the floor some time, a police officer came to the door?

A. Yes, sir.

Q. And he threatened Mr. Sinkhorn and the other people in there with arrest if he didn't go on and count these ballots again?

A. Well, I have heard since that he made that threat.

Q. Well, a police officer came to the door, didn't he?

A. Yes, sir.

Q. And after a conference with Mr. Sinkhorn, Mr. Sinkhorn came back and did what he said he wouldn't do, and counted the ballots over again?

A. Yes, sir.

Q. Now, when you made out that tally sheet, that tally sheet showed on its face that it had been changed and altered, the one that was returned to the election commissioners, didn't it?

A. It certainly did, because the count that was put on there by us was the correct count, and the one that was put on there by him was false.

Q. That is the ground on which you claimed that it ought to be made over again?

A. It is not the ground what I claimed, it is the real fact of the ground.

Q. You and he quarreled about that?

A. We never quarreled about that being correct, because he never said it wasn't correct.

Q. Is that the one Judge Toney made them sign?

A. Yes, sir.

Q. He made you sign it too, didn't he?

A. No, sir; I signed it of my own accord.

Q. He made Sinkhorn sign it?

A. I don't know that he did; I heard that he did.

Q. You know Sinkhorn claimed after the first count

was made, that another count would be unfair and illegal?

A. He didn't say so.

Q. Didn't he refuse to do it until the police officer came to the door and made some communication to him, and then he came back and did it?

A. He did; he had been on the outside and had conferences with that policeman before.

Q. Did you hear it?

A. I did not.

Q. You don't know what occurred?

A. I don't know what their conversation was.

Q. Has anybody ever told you anything about it?

A. Oh, yes, sir; people told me about it afterwards, what they had heard.

Q. Who told you what they had heard about it?

A. There has been a dozen or more told me what they heard about it, about the conversation.

Q. Mr. Sinkhorn didn't tell you anything about it?

A. No, sir.

Q. Lieutenant Snyder didn't tell you anything about it?

A. He did not.

Q. Wasn't he the policeman that came to the door?

A. Yes, sir.

Q. He didn't tell you anything about it?

A. No, sir; neither one of those two.

Q. These gentlemen, then, signed this report after a conference at the door with the police officer?

A. Yes, sir; he came to the door, and I have heard that he told them they had better go ahead and count the vote; that is what I have heard he told them.

Q. How long was it before you sorted those ballots out on the floor after the result had been announced?

A. After the result of the first count?

Q. Yes, sir.

A. I suppose some twenty minutes ,or twenty-five.

Q. Twenty-five minutes?

A. I suppose so, something like that.

Q. And what became of the ballots?

A. The ballots?

Q. Yes, sir.

A. They were finally destroyed; after the final count was made, they were all destroyed.

Q. Mr. Sinkhorn and Mr. Brucker and the other gentlemen were there, and saw the count, you were dissatisfied with it, and then you made a count of your own?

A. Yes, sir.

Q. And then the ballots were destroyed?

A. Yes, sir; when they were all satisfied, they all agreed that they were satisfied with the count.

Q. They were satisfied, because the police officer told them he would arrest these men if they didn't make the count?

Objected to.

A. I never said I heard that he would arrest them or anything of that kind.

Q. Did you hear any part of the conversation that occurred between Snyder and Sinkhorn?

A. The only word that I heard was the word "count"; I heard him say "count," and I don't know whether it was "count," or not "count;" that is the only word in the conversation that I heard at all.

Q. Did you hear anything about injunctions up there that day?

A. There was injunctions brought in there—yes, sir.

Q. And the people who were ordered in on the injunctions came in, didn't they?

A. Yes, sir.

Q. Anybody attempt to resist those men?

A. Yes, sir.

Q. Who attempted to resist them?

A. Mr. Sinkhorn refused to admit men with injunctions even.

Q. Well, did he afterwards admit them?

A. They came in anyhow; they came in anyway.

Q. Who was it that came in anyhow?

A. It was Mr. Patty Minton came in and handed him one of the injunctions and Mr. James McGill gave him an injunction.

Q. Is James McGill the man that is down there in the Labor Union?

A. Yes, sir; I believe he is.

Q. That is acting with Mr. Whallen in the city politics of Louisville?

A. I don't know about that; I never seen Mr. McGill but a few times to know him.

Q. Don't you know, as a matter of fact, that McGill is Whallen's lieutenant in the City of Louisville, and works with him and has been working for months?

A. I have no knowledge of that.

Q. You don't have any knowledge of that at all?

A. No, sir.

Q. Who is Patty Minton?

A. He is clerking for Mr. William Knopf in a saloon.

Q. What is Patty's politics?

A. Patty has always been a Democrat, as far as I know.

Q. What was he this time?

A. I think he was a Brown man this time.

I. W. Gardner, a witness, being duly sworn and examined by Mr. Breckinridge, testified as follows:

Q. Where do you live?

A. 2218 West Chestnut street, Louisville, Ky.

Q. What is your occupation?

A. Expert accountant.

Q. How long have you resided in Louisville?

A. I came to Louisville first in 1867. I have about half of the time since then resided in Louisville, and the other half, the most of the time have had a suburban residence, went in and out on the train; and so about thirty years I have been connected in Louisville some way or the other.

Q. Do you know anything about the Hambrick Committee, of which we have heard something during this contest?

A. Yes, sir; I am one of the committee.

Q. What position did you hold on the committee?

A. I was a member of the committee.

Q. Did you have in your possession—put into your custody the certificates, or any of the certificates, of the Hambrick party for challengers and inspectors on election day?

A. They were placed in a vault of which I have the key, there are two keys. I hold one of them and they are there now, or at least were a few days ago.

Q. Have you seen those certificates for inspectors signed by Mr. Hambrick since the election?

A. I did. I went there the night of the election hearing that there had been certificates given out by the Hambrick party. I went there and looked over to see if any of those certificates had gotten loose anyway, and I found them all there.

Q. Were those certificates signed—by whom.

A. They were signed by Mr. J. H. Hambrick, Chairman, and W. L. Hall, Secretary.

Q. Were they signed, or were signatures affixed by the use of a stencil or—

A. They were written on with pen and ink.

Q. Were any of the certificates signed by Mr. Ham-

brick and put in your custody there issued on that day to any inspectors at all?

A. No, sir; none.

Q. Have you examined them since the election?

A. I have, several times.

Q. And they are still, the last examination, in your—

A. Yes, sir; it was a few days ago, I saw the bundle, all still there; I suppose it is there now.

Q. Were you a soldier?

A. I was, for three years during the civil war.

Q. What side?

A. On the nothern side. I was in artillery three years.

Q. What army?

A. I was two years in the army of the Potomas and one year in the army of the Cumberland.

Q. Of what rank?

A. I was private most of the time, but quartermaster sergeant just before I came out.

Q. Is a gatling gun part of the artillery or the infantry?

A. A gatling gun is properly not artillery. A gatling gun is ordinarily connected with an infantry regiment. A section of the regiment is drilled for the use of the gatling guns, and is not ordinarily called artillery.

W. O. Bradley, being duly sworn and examined by Judge Yost, deposed as follows:

Q. What official position, if any, did you hold for a month prior to the November election, 1899?

A. Governor of this state.

Q. Were you at any time prior to the November election—at any time I mean during the canvass preceding that election, a candidate for the position of United States Senator?

A. I was not.

Q. I will get you to state to the board as full a history as you can of the reorganization of the militia subsequent to the Spanish war?

A. In doing that, may it please the board, I will be compelled to resort to some memoranda which have been taken from the records in order that I may present the proper dates. After the Spanish war broke out, Kentucky was called upon to furnish her first call. It was three regiments, as I now remember, and two troops or

companies of cavalry. The President indicated in an order that it was preferable that the State Guards or National Guards—they are called by both names in the various states of the Union, should have preference. We had at that time three regiments, or rather parts of regiments, none of which were full. I think the Louisville Legion had probably from 450 to 500 men, and I am not sure but I think it had more than any of the other regiments. Those three regiments very promptly offered their services. The accoutrements that we had here—the equipments in the way of guns, blankets and uniforms and things of that sort, belonged to the government of the United States. Every year the government issues to Kentucky—has for some years—eleven thousand some odd dollars of equipment for the State militia, or rather the State guard. The two terms are confounded very improperly. The militia really is only that part of the people, over eighteen and under forty-five, who do not belong to the State guard proper. When these men went into the armory, the Government, of course, demanded all of its equipment. The consequence was that we were left with hardly anything in the way of equipment for the new State Guard. Knowing the past history of the, State, the number of times it had been necessary to use the militia, and the condition of affairs generally, including the many turnpike raids—I think a portion of which were made before that time, and possibly a portion after, I don't distinctly remember—I felt that it was very necessary to have a state guard, and I went to work to get up that State Guard. My recollection is that the first company I formed was in the city of Louisville, of which Capt. Jacobs was made the commander by election. You see in the state guard, these officers are all elected, except those on the Colonel's staff, which he appoints. I got up that company. There was some trouble about getting the use of an armory, and I found that I couldn't do any good with the company, nobody seemed to take much interest in it, so I disbanded that company. The first memorandum that I have here of the first company which was formed in the state was one—Company A is not on this list. I am sure that was the first company, reasonably sure, but it does not seem to be on this list. But there were three companies formed along about the same time—one at Frankfort, of which Noel Gaines was the captain—no, Noel Gaines went into the army. He was the captain of the company here that went into the army. Another company was formed, and I don't remember who the captain was. I do remember that after

Gaines came out of the army, the Spanish war, he was re-elected to captain of that company. It strikes me it was a man by the name of Graham. At any rate that company must have been June 27th, 1898. I am a little wrong. I see by closer observation that Capt. C. C. Calhoun's company at Lexington was mustered in May 24th, 1898. I presume really that was the first company. At Bowling Green Capt. Thomas' company was mustered in June 30th, 1898. This other company at Pewee Valley was mustered in about this period in May or June. I had a lot of old guns that were left over here that were more or less broken and out of fix, and I had them fixed up, and we had had an order out for some new guns before the war broke out, and those guns got here, and by some means the government did not call for them; so we utilized them. But I had a great deal of trouble in getting back from the United States the equipment that we had furnished. We got back the guns, I believe, at last, but they came along, some one time and some another. We never did get back, as I now recollect, the blankets or the tents—yes, I believe we did get the tents finally. The only uniforms we got, as I now remember, were uniforms that we were entitled to under this annual appropriation of eleven thousand dollars for the State of Kentucky. Suffice it to say that I had very great trouble in bringing about the organization of this State Guard, and to give you gentlemen some idea of the time covered by this, I will read you the date of muster in of some of the other companies. The beginning was May 24th, 1898. June 27th, 1898. The next was June 30th, 1898. I told you, I believe, the localities of those companies. Then during the year 1899, in the month of July, these companies were mustered into the Louisville Legion, along about July 11th, 13th, and 27th. The second regiment is commanded by Col. Roger G. Williams. I have read to you already the dates of the muster in of two of the companies. There was a company mustered in at Barbourville February 18th, 1899, another at Williamsburg February 20th, 1899, another one at Somerset March 3rd, 1899, another one at Newport March 9th, 1899, another one at Covington, in November, 1899, another one at Ashland in March, 1899, another one in Lexington, April 8th, 1899, and still another in Lexington August 30th, 1899. Now the third regiment, Col. Tom Smith's regiment—I believe he lives at Bowling Green—there were added to this regiment, Morgantown, August 5th, 1899; Greensburg, September 20th, 1899; Hopkinsville, September 25th, 1899; Madisonville, October 5th, 1899;

Greenville, October 19th, 1899, and Franklin, October 20th, 1899, I believe that is in Simpson county. This comprises a list of these regiments of soldiers that were mustered in prior to the November election. As I stated, some of these companies had equipment, and some did not have equipment. The Bowling Green company, I believe it was, had these old Springfield rifles, I believe they called for fifty calibers; they have been discarded and the government has adopted a forty-five caliber. I don't think that company has ever been furnished with those new guns, and some of these companies possibly have no guns to-day, because we didn't have the guns with which to furnish them. That is about the history of the formation of the military. Now as to this Louisville matter--shall I go on?

Q. I want to ask you first, by what purpose were you actuated in the reorganization of the militia subsequent to the war?

A. I simply desired to leave the state in as good fix as I found it, and I felt it was my duty when this militia was taken away from the state, that there was just as much reason why the people should be protected after these people left as there was before they left, and we had had a State Guard here for years. I felt that we should continue that State Guard and that its organization should be perpetual. As to this Louisville matter, I believe I told you that my recollection was that about the first company that was formed was formed in Louisville, which company was disbanded. There came up a controversy about the arsenal or the armory in Louisville. It is unnecessary to go into that further than to say that after that regment had been mustered into the service of the United States government, that the United States property at that point was brought to Frankfort and placed in the arsenal here. Among other things were two gatling guns. I think one of those gatling guns was left with the Pewee Valley company, and I believe the other was brought here to Frankfort. There was still another gatling gun at Frankfort. When the Lexington company was ordered up to Clay county, their gatling gun being out of fix, the gatling gun which belonged to the Louisville Legion, and which was here in the armory, was sent up there to them for use. They took that gun to Clay, brought it back with them, and after it was brought back from Clay county, it was sent to Louisville, as I will tell you further along; but there were two of these guns which belonged to the old Louisville Legion. What else have you got?

Q. I will ask you, Governor, whether or not you were in the city of Louisville on the day of the November election?

A. I was, and I will explain, gentlemen, a little before I come to that, as to how it happened that this equipment for the Louisville Legion was not sent there before the date upon which it was sent. There came up this same old trouble about an armory. The Board of Trade in Louisville sent me a petition, asking for the formation of this regiment. It seemed that a number of petitions had been gotten up, and the County Judge, as I was informed, had declined to make an endorsement on the petition as to the good character of the men, but stated that they were men of good character. However he thought it was premature to get up this regiment and he declined to give this certificate. The Board of Trade in Louisville then called upon me for an organization of this regiment.

Q. Do you remember the date of that call?

A. I do not—insisting that Louisville was a large city in which there might be a riot at any moment, and they thought they were entitled to protection. I ordered that regiment mustered in notwithstanding the refusal of the County Judge to give this certificate, my construction of the law being that there were two states of case under which a State Guard might be formed. One was where the locality requested it, and through its County Judge obtained an endorsement. Another was where the Governor desired to form these companies himself, and thought it to the best interest of the Commonwealth. Again I thought that under the Statute, the formation of companies in cities of the first class was governed by different rules to those which were formed ordinarily. At any rate, I believed that I had the right to have that regiment mustered in, and I did have it mustered in. After they were mustered in, this trouble arose about an armory with which you have already been acquainted. They were after me to send their equipment. I stated to them, "I won't do it, I won't send you any equipment until you have some place to put it, these guns and clothnig cost a great deal of money and it will be perfectly idle for me to send those things to you until you get your armory." Now my recollection is—I think Mr. Mengel stated it in that way—that when the application was made for an equipment it was made to the Adjutant General who sent it. I don't think it was made to me. At any rate the equipment was sent. Now then as to the trip to Louisville—

Q. Let me ask you a question before you answer—I want to ask you when you went there how long you proposed to stay when you went?

A. I think I understand the point and I will try to explain it as far as I can. I was in conference with the chairman of the Republican State Central Committee. There was a desire for me to make a speech at Springfield on Monday before the election and also a call to make a speech at Corbin on Monday before the election, also to speak in Louisville on Saturday night before the election. I was very tired and didn't really feel able to make any of these speeches, but left it all with the chairman, being insisted upon. On Saturday I concluded that I was simply too tired to go down there, to go down there and make any speeches, and as Col. Landrum stated, I told them over the telephone—my recollection though distinctly is that I was at Lexington. He was mistaken about that—he insisted and said that the friends there generally insisted, and finally I agreed to go. I did not know in the meantime what arrangements had been made as to where I should go on Monday. I asked Mr. Wood who was in Lexington with with me, to go with me down to Louisville, and he kindly consented. We reached there that night, and were met by Col. Landrum at the depot, in company possibly with somebody else, though of that I am not perfectly certain. We went to the Galt House, and that night Col. Landrum took Col. Wood and myself in a carriage to some of these appointments. The first place we went to at Music Hall. The speeches I made, were brief, because I was tired and didn't feel like speaking. Col. Wood spoke first. After he spoke I made a short speech, I don't remember how long, but I should say certainly not exceeding a half hour. We left the hall together. Mr. Denny came in as I understood, I don't know, at least I am not certain, at this time; but about the time we went out Mr. Denny came in. I did not hear Mr. Denny's speech nor did I denounce Mr. Goebel that night as stated in the newspapers. We went from the speaking around to the Pendennis Club to get a lunch. We had been there for some time, when some gentlemen came in, I don't now remember whom, and said it was the night of the meeting—the annual meeting of the Board of Directors, I believe that is what they called it, that they were upstairs and anxious that we should come up there. We went up there and I met Mr. Charlie Ballard and Mr. Kennedy and quite a number of gentlemen whose names I cannot recall. Col. Landrum is entirely right in saying that we left there pos-

sibly after two o'clock. We got back to the Galt House and retired, and the next morning we didn't get up until about ten, as I now recollect, in consequence of which it was out of my power to go home or go anywhere. In the meantime I had been informed, however, after reaching Louisville, that no appointments had been made for me to speak either at Corbin or at Springfield. After we got up that morning, Col. Landrum got the papers which contained a proclamation from Mayor Weaver. After we ate breakfast and went back to the room, people began to come in. I couldn't tell you, gentlemen, to save my life the number of people that came there, and it would be exceedingly difficult for me to give the names, but they came in quite a number. They were very much excited about this proclamation, and claiming that the proclamation was a threat to put members of the Honest Election League under arrest on the day of the election, and that if such a thing as that could be undertaken, that they would resent it, that they would not submit to anything of that sort, and that there would be a riot in the city. I had a talk with Col. Gray and Mengel. They assured me that affairs were in a very serious condition. I ordered—I think the order has been read—my recollection is it is directed to both of those gentlemen—I ordered them to put a detail in the armory so as to prevent anybody from getting the guns. That had been customary from the time that I came into office up to that time. I had on two occasions, I remember, certainly authorized the putting of soldiers in the armory at Louisville. On one occasion when the trouble arose between the two Boards of Safety, Mr. Todd's Board, and somebody else's, I don't know what it was, but they had a trouble about it. Judge Toney fined Mr. Todd, I believe, and quite a number of his adherents for contempt. Col. Castleman communicated with me about that, and as he stated, I authorized him to exercise his discretion in putting men into the armory to maintain the public peace. At the election in 1897, a short while before the election, Col. Castleman again assured me of the trouble in Louisville, and I again gave him the discretion to place in the armory a sufficient number of men to preserve the public peace. The statement of the expenses of those soldiers was afterwards returned to the Auditor's office, and the payment was allowed, amounting I think to something I think over four hundred dollars, and the number of men in the armory, from the time they were first put in until after the election was over, as I remember, is 135. After that was over, the election,

I received a letter from Col. Castleman, which I will read: "Headquarters Louisville Legion, 1st Regiment K. S. G. Louisville, Ky., December 1st, 1897. Hon. W. O. Bradley, Governor, Frankfort, Ky. Dear Sir:—Complying with the authority given in your favor of the 22nd of October, last, I beg to hand you herewith statement for account of active service and rations for detail of the Louisville Legion serving prior to, on the day of and subsequent to the last day of election. I send this by hand of quartermaster, Lieut. Roy McDonald, in order that he may secure immediate settlement. I beg to say to Your Excellency, that on this as on other occasions, your prudence has no doubt prevented violence in this city. Lieutenant McDonald can explain to you in particular detail, if you desire I have the honor to be, dear sir, very respectfully your obedient servant, John B. Castleman, Colonel Commanding."

As I stated I had ordered a few men to be put into the armory to take charge of that property. Afterwards it occurred to me, I think on the 6th of the month probably, about the presence of this other gatling gun down there at Pewee Valley, and I ordered the lieutenant there to place a number of men in his armory to take charge of that property and prevent it from being used by anyone, and the gun from Lexington happened to be ordered was on this Sunday when these gentlemen talked to me, as Mayor Weaver said, that he had ordered out extra police was he wanted to be ready and not have it said as in case of Bloody Monday of Louisville that the mayor had not done his duty—so when they told me about the troubles that would probably arise, something was said about the gatling gun by one of the other of them, and I ordered that gatling gun sent from Lexington and it was sent. They stated the time of its arrival. I don't know anything about that. Matters passed on until Sunday night. I never saw more evidence of excitement in my life than I saw from the persons who came there to see me. I did not go out on the street to investigate the matter, but in the meantime I had—I had forgotten to say, that finding I could not get away on Sunday, I agreed to make this speech at the Auditorium. This crowd came in, and at night at one time I think there were in my room probably as many, I will say, as fifteen men. There may have been more, but as they were coming and going, it was impossible for me to definite remember the number of men who were there first and last. I did not send for Col. Bullitt to get his opinion. Col. Bullitt was doubtless asked to go there by someone else, I don't know who.

I did not send for anybody, to get anybody's opinion, but there was a large number of men there first and last, and on that night the question was fully argued. My recollection is that at that meeting there were present Augustus E. Willson, a Republican, Mike Muldoon, a Democrat, Judge W. O. Harris, a Democrat, Col. Thomas W. Bullitt, a Democrat, Col. Mengel, I believe, a Republican, a young gentleman by the name of Haas—I believe Capt. Louis Haas, and I really am not very certain about his politics, but I think he is a Republican. There were some others, and during that night, whether at that particular time or not, I don't remember, Genl. Basil Duke and Mr. Helm were in my room. These gentlemen were insisting—I don't think Genl. Duke and Mr. Helm had much to say about it, I don't remember that they did, but I do remember that these other gentlemen, and some whose names probably I have not mentioned, were insisting that there was going to be a riot, and that I ought to call out the soldiers and put them in the armory and have them ready to put down anything of that sort. And I was asked whether or not I had the power to do these things. I said very emphatically that I had no question about my power to call out the troops, if there was any necessity for it, but that I would not call them out on the statement of anybody; that I would have to have affidavits sworn to by reliable men, and filed before me, showing the necessity of such a thing before I would do it. The question was then discussed as to whether or not the local authorities of the city could be trusted. Several of the gentlemen stated that they could not, that they were in collusion as against these other people, the feeling was intense, and that if they had control of the soldiers, that they would simply use them for their own benefit and not to preserve the public peace. I said, "Well, gentlemen, I can't help that, I will not act in this case unless I am assured by affidavit that these men cannot be trusted, the local authorities. That ended the matter for that night. Sometime during the next day, I don't remember what time, somebody, I don't remember whom, brought to me and filed with me these affidavits. I suppose it is unnecessary to read more than one of them because they are substantially the same.

"The affiants————————being first duly sworn, state that they are citizens and residents of the city of Louisville, County of Jefferson. They state that on account of the present excited condition of the public mind, the general opinion prevailing that a fair election will not be given to the citizens of the said city and county, and the

impression that the free exercise of the right of franchise will be interrupted by force and fraud, they verily believe there is great danger that many breaches of the peace, riots and disturbances will occur on the day of the election, to-wit: the 7th day of November, 1899. They believe that in order to preserve the peace and secure the rights, lives and property of citizens of said city and county, that it will be necessary to strengthen the civil authority in the said city and county.

Affiants further believe that to secure these ends it will be necessary to employ military force in aid of the civil power of the Government, for the enforcement of the law, and to order into the service so much of the State Guard or military force of the commonwealth as the Governor may deem necessary, to prevent these dangers. As further supporting these apprehensions, we refer to a recent proclamation of the Mayor of the city of Louisville, which we add to this affidavit.

The affiants verily believe that if such State Guard or military force be ordered to assemble and be ready for service; or if ordered into active service, can not safely be placed under the command, charge or direction of the Mayor of the city of Louisville, the jailer of the said county of Jefferson or of the sheriff of the said county of Jefferson. They further state there is no marshal in Jefferson county, and that the chief of police of Jefferson county is a subordinate of the Mayor and of the Board of Public Safety, and directly subject to their orders. Their reasons for this belief is that the officials named are active partisans of one candidate, in full sympathy with measures calculated to excite further alarm and create further disturbance."

This affidavit is signed by Allen R. Carter, Richard W. Knott, and it looks like Charles I. S. Stewart. I believe that it is it.

This affidavit is substantially the same signed by John B. Baskin.

This affidavit, I see by endorsement, is by John I. Callaway, John C. Miller, E. L. McDonald, and Robert Cochran.

These papers were handed to me, as I tell you, some time during the day, I don't remember. I do remember, though, that later in the afternoon a number of gentlemen came to my room, very much excited about the removal of election officers and the appointment of others in their place, and expressed to me the opinion that there would certain be a riot, and in all probability that great

harm would possibly come to some of those election officers. This was on Monday, I don't know whether I stated that awhile ago or not. I believe I did, though; it was after that Sunday night conference. I had read that morning, gentlemen, in the Courier-Journal, an editorial which made quite an impression on my mind. I had read some others, or one of them that I remember, which seemed to me to be rather inflammatory. This editorial was in the Courier-Journal of the 6th, and I will read it to the Board, as my action was based upon all these different things:

The persistent and determined purpose of a few reckless and desperate persons to precipitate upon the city bloodshed and riot the coming election day needs no further proof than is furnished by the shameless publications elsewhere in this issue of the Courier-Journal. These would-be lawbreakers throw off all disguise. In specific terms they declare their intention to defy the constituted authorities and to engage in open rebellion against the law and the officers of the law. They still go further and single out certain peaceable, law-abiding citizens by name for assassination at the hands of the mob which they themselves have organized. "I soon found there was quite a difference of opinion between the Courier-Journal and these other people as to who was in the wrong, each one, however, not hesitating to abuse the other," and drilled, and threaten to turn loose upon the community.

All this is done under the assumption that they are to have a fair election. The election law is specific in its terms and admits of no equivocation. In every particular its provisions have been executed by the commissioners. Each party is given its equal representation in the officers of election. There is not the smallest possibility under the arrangements made that any vote will be unfairly cast, or falsely counted. With a Republican challenge and a Democratic challenge, with a Republican inspector and a Democratic inspector, there is no chance for fraud in the casting or counting of the vote. Hence it is that the cry of riot and bloodshed by the orators and organs of the Taylor and the Brown tickets seems to be more causeless and senseless. What do they expect to gain by riot and bloodshed? If they themselves are not prepared to precipitate and to lead this, where it is to come from? Nobody except themselves is talking about riot and bloodshed, and nobody else is thinking about it. Yet, the whole effect of the course marked out by them

would be to violate the election in toto and to give the State Board the opportunity, if the State Board desired it, of throwing out those precincts where disorder and riot and bloodshed had prevailed.

It can have but one purpose; the intimidation of the voters; the raising an issue under cover of which the election may be easier purchased by the Louisville and Nashville's corruption fund in the hands of Whallen, its accredited agent.

The articles which we print from the Dispatch—inspired and directed by the Louisville and Nashville Railroad—and from the Free Press, a newspaper edited by the Assistant Adjutant-General of the State—the confidential arm of the Governor of the state," which, by the way, I will stop to say parenthetically was not and is not true, that is, so far as being the confidential military arm of the Governor is concerned, admit of no possible misunderstanding. They urge, advocate and suggest the murder of certain citizens names, including the Mayor of the city, the Democratic members of the Board of Public Safety, and the Democratic members of the Board of Election Commissioners. They also urge, advocate and suggest the burning of the Courier-Journal office and the assassination of at least one of its emplpoyes, mentioned by name, and the threatened murder of the owners of the paper. All this upon the sheer surmise, of their own invention, that there is not to be a fair election, although the election to be held is regulated by law and both parties are fairly reppresented among the election officers.

Meanwhile, it is known of all men that the Louisville and Nashville Railroad has a large sum of money in the hands of well-known and infamous agents to corrupt the election.

Why should Mr. Milton H. Smith or Gen. Basil W. Duke thirst for the blood and desire for to burn the property of Walter N. Haldeman and Henry Watterson? Why should they be assassins to slay them and incendiaries upon them to burn? If this be not their purpose, what is the meaning of the article of the Dispatch—presumably written by Gen. Duke—assuredly printed under the inspiration and authority of the Louisville and Nashville Railroad, who are putting up every dollar of the money that keeps the irresponsible paper alive? Do these gentlemen think so meanly of us, or will turn us a hair line from the path of duty we have marked out for ourselves?

To our mind it is simply incredible. We stand in

sheer amazement. Except we see it writ down in black and white, we could not have believed it possible. We have exhausted the resources of justice and courtesy with respect to the Louisville and Nashville railway, and its officers, and we know not to what to ascribe their bloody malevolence against us. They threaten the Mayor with death. They threaten the Democratic officers of election with death. They threaten the Democratic members of the Board of Safety with death. All these are good citizens—honored citizens—citizens charged with supreme public duties. Finally, they threaten the city itself, and all good citizens, with riot, conflagration upon their own ipse dixit that from the Mayor down to the humblest policeman, the whole warp and woof of the government under which we live is rotten to the core, and that they alone are pure. It is not merely incendiarism in its most dangerous form. It is simple rebellion. It is rebellion both against established law and the peace of society. It will not avail them. The Mayor can be trusted to do his duty. The police may be only "three hundred," as Gov. Bradley's adjutant-general contemptuously says, "and," as he further declares, "they will not shoot," as if to encourage the lawless and the crazy to security in the proposed riot —but they, too, can be trusted to do their duty, according to law. In a word, the peace and good order of the city are in safe hands, and good people need not fear to come out and vote; to come out to vote, sure that their votes will be honestly counted and that their persons will be as safe at the polls as in their own homes.

Let no man fear or falter. These law-breakers will not venture to do the work they boldly, shamelessly threaten. Their purpose is to bully in order that they may buy. They are led by the most notorious ballot-box stuffer and professional corruptionist the city has ever known. They are backed by a few senseless and irresponsible persons, masquerading as the Honest Election League. But they will not dare to take the law into their own hands, to precipitate riot and bloodshed, to hang and to otherwise slay peaceable, unoffending citizens, having the same rights of franchise and of conscience that they claim for themselves, and to cause the burning of the Courier-Journal building and the murder of its owners. They will not dare attempt it. In case they do, they may make sure of being welcomed on the threshold, if not with bloody hands to hospitable graves, yet with a certain resignation of the sense of duty done, and an appeal for the public peace and order, the good

government of the city and state, and may God defend the right.

I can't remember, gentlemen, the different editorials that I read from the different newspapers. Some of them doubtless have been read here before you, but in arriving at my conclusion of what my duties were in the premises, and my responsibilities, I took into consideration all these different things. I took into consideration the Mayor's proclamation, which I am frank to say, contained one statement that I thought was a little remarkable. He spoke of preventing unlawful assemblages in the city, and added to it—that is, assemblages at the polls. I thought that the people had the right to assemble at the polls, and that an assemblage at the polls was not unlawful. I was told that what was meant by that was that if these gentlemen went to the polls that they would be arrested. The soldiers were not called out, as I tell you, until after this excitement about these removals occurred. I then ordered Col. Mengel and Col. Gray to place those men in the armory, and they did place, as they stated to me, something over two hundred. There were, I believe, in all, about four hundred members of the Legion. I gave the orders to them which have been read to you. I stated to them that not one of these soldiers must be allowed to go with his uniform by any polling place in that city, and I gave the instructions as to what their duties would be, which were also read to you. My purpose in calling that militia to the armory was this, that in the event there should be a riot in the city of Louisville, that that riot should be put down, that the public peace should be preserved, that the property of the citizens should be preserved. I never thought for an instant in calling out those troops of controlling any election, or taking the part of any Republican, or the part of any Democrat, or the part of anybody else, except to maintain the public peace; and had the Republican party on that day precipitated a riot, those soldiers would have been used against them, as far as might be necessary to have put that riot down, and the same would have been the case with regard to the Democrats, because those soldiers were not called out to perform a political duty, but they were called there to preserve the public peace. After these soldiers were called out, I said to some gentlemen who were in my room, that I didn't think that I ought to make any speech that night. I have always felt something has been said about the Governor of the state going on the stump. I have always felt that the Gov-

ernor of the state was no better and no worse than any other citizen of the state; that he had a perfect right to take part in public affairs if he chose to do it, and such, I believe, has been the almost universal custom of the Governors of this state. Not only so, but even the members of the bench, the judges of the Circuit Court have frequently gone on the stump in this last campaign, a number of them, and I believe one judge of the Court of Appeals. I take it that because man holds a position, he does not thereby disqualify himself from making known his political opinions. But when I had been called upon to act in an official capacity, I felt that I ought not to make a speech; that possibly I might say something which might be misconstrued, and that as I had been called upon to act officially, it was not proper for me to act personally or politically any further, and for that reason I declined to make this speech at the Auditorium. These soldiers remained in the armory—at least I suppose they did; I don't know anything about it; I had given the order, and on Tuesday Mr. Huhlein and someone else came to me and asked me, and, by the way, I never would have recollected it if he had not been summoned here—said to me that they were delaying the election down there somewhere and preventing a vote, and he wanted me to send a lot of soldiers down there to break it up. I said to him, Mr. Huhlein, "I am not here for any purpose of that sort; I have no right in the world to go down there and say to those people how rapidly men shall vote or anything of that sort, and you must excuse me, I can not do it." Later in the day a gentleman by the name of Braun—Samuel M. Braun, who has been here repeatedly, but who, I believe, has gone now—in company with someone else, came in and made a similar complaint and asked for soldiers, and I declined to furnish them. In the afternoon of that day, a little after four o'clock, two gentlemen came in whose names I don't recollect, but whose names—the name of one of whom was stated by Col. Landrum and possibly somebody else, and Mr. Bush. They came in and said to me that they wanted me to send soldiers down there to put inspectors into some polling place. I said to them, "Gentlemen, I won't do that; I have no authority in the world to do that; you gentlemen have been complaining around here about the Louisville police taking possession of the polls for political purposes, you now ask me to do the very thing that you have been condemning the police for. I can not do it and won't do it." This Mr. Lewis, this correspondent, young

man, who testified early in the trial, came to me and asked me if I were going to call out the troops. I said to him, "Why, certainly not; I have no idea of doing anything of that sort." I took it that he meant that I was going to call the troops out of the armory to take part in the election, because the troops had been ordered into the armory, and I supposed he and other people knew that.

When this man Mr. Bush said to me that Judge Toney had issued an injunction, I said, "I don't know anything about that. You are giving me the first information I heard of that sort. I will not issue orders upon a mere ipso dixit of gentlemen who come to see me to tell me what has been done, and what has not been done. You must excuse me. I can't send these soldiers there, and I will not." He left and at five thirty-five I see I indorsed it—no, five twenty-five p. m., upon this letter from Judge Toney—this letter from Judge Toney, which was handed to me, which has been read to you, in which he tells that the Brown inspectors and the Republicans had been refused into the precincts to witness the count. I will read the letter to you: Louisville, Ky., Nov. 7, 1899. Gov. W. O. Bradley, City. Sir: Two mandatory injunctions were to-day issued by me as one of the judges of the Jefferson Circuit Court, requiring election officers at the election precincts to allow the inspectors for the Brown and Republican tickets entrance to the voting precincts to witness and inspect the counts. It has been represented to me that these injunctions are being contemptuously ignored and violated. I have to-day issued the decree or judgment of law. I am not a ministerial officer, and can not enforce it. I call your attention to this fact as the Chief Executive of the state, that you may take such action to see that the laws are executed as you may deem proper under the circumstances. Sterling B. Toney, Judge, Jefferson Circuit Court, Law and Equity Division. When this paper was received I not only felt but I knew that my duty was to see that the orders of the court were enforced. It is the duty of the executive department of the government to enforce the law, and the Governor takes a special oath—under the Constitution, rather, it is made his especial duty to see that the laws are enforced. It is true that Judge Toney did not ask me to send the soldiers to enforce his orders. He simply stated to me that his order was being disobeyed, and that he could not enforce it, and he certified the fact to me to take such action as I thought was proper. I at once ordered these soldiers out from the armory. I supposed they had

gone out, but after some considerable length of time had elapsed, Col. Mengel came into my room and said to me, "You have ordered us to enforce these orders of Judge Toney's, but you have not given us a list of the precincts nor the names of the inspectors." I said, so far as the inspectors are concerned, you can only determine that upon the certificates which they hold. So far as the precincts are concerned, I have sent you a list; and he said, well, I have not received it. I said, you had better go back, and possibly the man is there by this time. He sat there some time, and finally the gentleman came back with the list of precincts and handed it to Col. Mengel, and he then got up and went back to the armory, and after he had been gone some length of time I was called to the telephone. When I reached the telephone I asked who it was and was told it was Lieut. Col. Gray, and I asked him what was the matter, and he said they had not been able to get out of the armory, that there was somewhat delay—that the sheriff of the county had been there claiming that they could not go except under his authority, and asked me whether it was true. I said to him that it was not true, that I was the chief civil officer of the state, and that I had a right to make that order; that under the law I could, if I chose to, place the troops in the hands of certain peace officers; but if for any reason I did not desire so to do, or did not regard it safe so to do, that I had the authority to act myself; that if I did not have such authority it would be impossible for me to do any good where the officers happened to be arrayed in a conflict, as they frequently have been in different parts of the state; and he said all right. I went on back to my room, and directly somebody called me again. I went down to the telephone, and I think Col. Mengel said to me we are just starting out of the armory. I went back to my rooms up stairs and pulled out my watch and found it was five minutes after seven o'clock. I endorsed it on the back of that letter. As to what they did after they got out of the armory, I do not know; they have stated what they did.

Q. I want first to get whether the formation of the Legion and its equipment had any reference whatever to the approaching election?

A. Oh, no. I will tell you what happened about that; when the regiment came back from Puerto Rico it was stated in the Louisville press that they desired to re-enter the service, but that the Governor of Kentucky would not issue a commission to Col. Castleman on account of some troubles which had taken place between them, and which

is not necessary to state here. I stated in a public interview that whosoever they selected to be their officers would be commissioned, irrespective of my personal feeling. I supposed the old Legion would go right back into the State Guard service. I was very anxious to have them do it; and I knew there was a desire in Louisville to have them to preserve the peace in case of riot. I gave Col. Gaither and Col. Smith, all three of whom were Democrats, the privilege of re-forming their old regiment and holding their old places. Col. Smith said that he desired to do so; and Col. Gaither said he did not want anything to do with soldiering, and he retired, and in that way Col. Roger Williams was selected.

Q. Do you know anything about the politics of the members of the Legion?

A. I know some of them; I know the politics of Col. Mengel, who is elected by the Legion. As I stated a while ago, these officers were all elected, except the staff officers. Captains were elected by their companies and the majors, lieutenant-colonel and colonel by the regiment. The majors, possibly the battalions—I believe, I am not certain.

Q. You have mentioned the following names of persons who furnished you affidavits: John I. Calloway, John C. Miller, E. L. McDonald, John B. Baskin, Elenor Carter, Richard W. Knott, Charles I. Stewart. I will ask you if you know what are the political affiliations of these several gentlemen—first of Major John I. Calloway?

A. I did not know the gentlemen, all of them except as I heard; some of them I knew. I knew that Mr. Baskin——

Q. First Calloway?

A. I don't know except what I heard about it. He is not a Republican, is my understanding.

Q. Is it not a fact that he is an ex-Confederate soldier?

A. I don't know; I have heard it.

Q. What did you know of John C. Miller?

A. I did not know, except that I understood that he was a Democrat.

Q. E. L. McDonald?

A. I understood he was a Democrat.

Q. John B. Baskin?

A. I knew Mr. Baskin quite well; I knew he was a Democrat.

Q. Elenor Carter?

A. Elenor Carter, as I understand, is a Democrat now, but he voted for me for Governor in 1895, and it gave me a very kindly feeling towards him; I thought he knew a good Governor when he saw him.

Q. Richard W. Knott?

A. I knew Mr. Knott was a Democrat, of course; he is editor of a paper—sound money Democrat.

Q. Charles I. Stewart?

A. I don't know much about Mr. Stewart.

Q. Is not he the managing editor of the Dispatch?

A. I don't know, sir, about that; he may be, I won't say. I know Mr. Carter is connected with the Dispatch; I think the other man is in some capacity, possibly editor.

Q. It is alleged in the notice of the contestant in this contest, that you, as Governor of the Commonwealth, "That you as Governor of the Commonwealth called out the military forces of the state into active service in the city." I will get you to state under what law you acted in making that call, the facts of which you have just detailed to this Board?

A. Gentlemen, here is the law under which I acted, Section 2672 and others following in the Kentucky Statutes: "It shall be the duty of the Governor whenever he shall deem it necessary for the safety or welfare of the commonwealth, or when any actual or threatened invasion, insurrection, domestic violence, or other danger to the public interest, makes it necessary to employ the military forces in aid of the civil power of the Government for the enforcement of the law, or to preserve the peace, and the security, rights, lives or property of the citizens, to order into active service so much of the State Guard or military forces of the commonwealth as he may deem necessary. The State Guard can be ordered into active service only by the Governor. The military shall be at all times and in all cases in strict subordination to the civil powers. In any active service the Governor may direct any officer of the military forces to any of the following named officers of the district in which such force is employed: Mayor of a city, sheriff, jailer or marshal." Now, gentlemen, the section of the Constitution has been read here. I do not remember the section—75. I will give you gentlemen my construction of these matters and why I acted as I did. "The Governor shall be commander in chief of the army and navy of this commonwealth and of the militia thereof, except when they shall be called into the service of the United States. But he shall not command personally in the field, unless advised so to do

by a resolution of the General Assembly." I took that, gentlemen, very clearly to mean a state of war, and where the militia is used for the police service. As was stated by Judge Toney, I do not regard the Governor of the commonwealth as being a military officer except in the case of actual war, when the Legislature may command him to go into the field. He is nothing more or less than a civil officer—the chief civil officer of the commonwealth—the chief peace officer of the commonwealth—who by the Constitution, as I stated a moment ago, is compelled to see that the laws are enforced. Now he may, if he chooses, turn over these soldiers to these local civil officers; but as I stated a moment ago, if he be satisfied that that, instead of stopping a riot, or if he reasonably believes that instead of stopping a riot, would only make matters worse, then he has a right, and it is his duty, to take charge—not to take command—as you speak of an army, but to take charge of these soldiers just as a sheriff would take charge of them, or as any other civil officer would take charge of them. Now, for instance, you take the recent troubles in Clay county. There was an instance where nearly all of the civil officers were involved in a feud, and I could not have put the soldiers under the command of any of these people; consequently I waited until the Circuit Court came on, and put them under charge of the Circuit Judge. Had I felt that the judge was an improper person I should have gone myself and taken charge of them, not as a military satrap—not as a military officer, but as the chief peace officer of the state of Kentucky. That is my construction of this Constitution and state.

Q. I see it is further alleged in this notice; as I started to ask you awhile ago, that you, in violation of the law of the land, went to the city of Louisville and county of Jefferson the day before the election, and assumed direct command of the military forces. I will ask you whether or not in assuming the command, as you did, control and direction, as you have stated you did, you acted under the law, and under your constructions of the section of the Constitution you have read—No. 75?

A. I have not the slightest doubt of my duty in the premises—I have not now, and I had not then. Col. Bullitt told you, and very properly told you, that I had a right to take charge of the military, and I have no doubt I asked his advice in the premises, both as a lawyer and as a man. I understand he is a good lawyer and a good man. I probably asked of him the propriety of taking this

action, and I asked all these gentlemen who came in there. Dr. Griffith was another. He was in there, and I did not give his name; and Mr. Halsey, I think. Dr. Reynolds was in there in my room—no, I was not in my room; he was in the hallway. I can not recollect whether it was on Sunday that I had the talk with Dr. Reynolds or not. Dr. Reynolds I know; he is a specialist.

Q. One of the teachers in the hospital and College of Medicine?

A. Yes, sir; it is proper to add, however, that Dr. Reynolds did not have anything to say to me on this subject. It was on another subject that he came to talk to me about.

Q. It is further stated in this notice of the contestant that in obedience to your orders the militia went to the polling places in the city of Louisville on the day of the election and intimidated many thousands of voters—enough to have changed the result of the election. I will ask you whether or not that statement is true?

A. If it is true I do not know it. I did not see where they went, and I only know when I told you gentlemen. I know my instructions; they did not have any orders to go into the polling places until this letter from Judge Toney came.

Q. Don't you know it to be a fact that they were not ordered from the armory until the polls had closed?

A. There is no doubt about that. Three hours before they left their armory the polls had closed. As I stated to you awhile ago, it was after seven o'clock. I presume the polls had closed at four o'clock; that is the law.

Q. Many things have been said by witnesses, and questions asked by counsel in the attempt to prove that you have been an extreme partisan in your conduct as Governor of the state. I wish you would state whether or not that is true?

A. Yes, gentlemen, I may have been without knowing it, but I have tried, or did try very faithfully while I was Governor, to discharge my duties honestly, and to give to everybody the true protection of the law. In the distribution of offices, I appointed several Democrats to places. I remember that is a correspondent of the Courier-Journal, Mr. Willis, was appointed on the Board of Equalization; another, Dr Ely, a Democrat, who lives here in Frankfort, was appointed superintendent of the feeble-minded institute. Another, Dr. Wiley, and by the way voted against me for Governor and for Mr. Hardin, or at least I understood he did; he said he did—at

Lexington. I offered to appoint Mr. Norwood to a position, which he concluded he did not want; he was a Democrat; and some other Democrats that I do not remember now. In these lunatic asylum matters I tried to give the Democrats a fair representation, and appointed quite a number of them as commissioners, and this feeble-minded institute, I did not forget another there, one of my newspaper friends who differed with me, Mr. Jack Stewart, who was appointed commissioner at the feeble-minded institute. I do not deny, gentlemen, that I am a Republican; I never have denied that; but I tried as Governor of Kentucky to be the Governor of all the people; and if perchance I did act a partisan in anything I do not recall it; and I regret very much that I did. It was an error of my head, and not an error of my heart. And further on that question of partisanship I want to say to you gentlemen, that I recommended to the Legislature of Kentucky that the charitable and penal institutions should be taken entirely away from politics, and that men should be appointed solely on account of their qualifications; that the interest of the state would never be fairly represented until that was done; and the experiences of other states in the Union showed that to have been done. I will say another thing on that subject; under the act of Congress I had the power to commission officers who went into this Spanish war. I did not remove a single officer in any regiment, nor did I appoint any officer where there was a vacancy, except upon consultation with the colonel of the regiment. I found these regiments composed almost entirely of Democrats—all Democrats. I believe one lieutenant-colonel was the only Republican. The captains and lieutenants were most all Democrats; and I think probably one company from Middlesboro, which was the only company in that section of the state—Eastern Kentucky, but I did not make any removals in those matters; and when the Fourth regiment was organized I thought it but fair to give that section of the state something, and did give them the colonelcy of the regiment; but at that time I appointed as lieutenant-colonel of that regiment Mr. David Murray, of Cloverport, who was a Democrat of the regulation sort; that is my understanding; blown in the bottle, a yard wide and all wool. After that Spanish war was over, or at any rate after a number of officers had returned, I was asked by the Secretary of War to mention the names of some eight or nine, eight, I believe it was, of the officers of that Spanish war who had returned home—to recommend them for appointment

in the Philippines. I recommended them, and five of those men were Democrats, and four, I think it was, were Republicans. Major Allen was major in the Second regiment when the war broke out. Major Owns was appointed in that regiment at the instance of the colonel, in place of some major, I don't remember who.

Q. Governor, who formed the State Board of Contest prior to the passage of the Goebel law?

A. I am not sure, but I think the Governor, the Attorney-General, the Secretary of State, the Auditor, and the Treasurer, I think.

Q. What was the personnel of that board and its politics on the trial of the contest case of Porter vs. Dempsy?

A. All Republicans.

Q. Who was chairman of that board during that trial?

A. I was.

Q. How did you vote in the decision of that contest?

A. I decided the contest for Dempsy.

Q. Were there any votes in the negative?

A. Unanimously in the favor of Mr. Dempsy.

Q. What was his politics?

A. Democratic.

Q. What were the politics of Porter?

A. Republican.

Q. There is another that has come out during this trial, to-day only, I believe. You were charged with going to the city of Louisville to make speeches some time in the past in favor of the Hambrick faction of the Republican party in Louisville?

A. That is a mistake. I can very readily see how that mistake was made. I tried, after I was elected Governor; my recollection is that I have never attended but the one convention, and that was this railroad convention at Louisville.

There was a very unhappy disturbance down there, existing in the Republican party, one wing of which was known as the Hambrickites and the other as the Davisites. Each wing had elected delegates to that convention. I was asked to go down there and see what I could do to harmonize these two elements. I went there and made a very earnest effort to harmonize them, and proposed that each delegation should be admitted with half a vote each, and as usual in such efforts I did not succeed.

Q. Col. Mengel in his cross-examination was asked several questions about his visit to Frankfort with you and Genl. Collier. Please tell about that Lexington trip?

A. Col. Mengel's statement about that is entirely true. I was going to Lexington with Genl. Collier, and when we started to get on the train and they were getting off, and asked where we were going, and we told them, and one or the other of the gentlemen said we are just coming up to see Collier, and he said come along and go along, and went and had some talk with Genl. Collier about their equipment, I don't know what. And when we got to Lexington Genl. Smith, who was a friend of mine, met Genl. Collier and myself at the depot, and took us all to his house and took dinner there. I do not remember the discussion that took place between them and Collier, but it was about the equipment. There was nothing said about the election and nothing said about calling out the militia—I should say, the State Guard; that is what it is properly called, because the militia has never been called out. The Governor has a right to call out the State Guard, and if that proves insufficient he can call out the militia. The statute makes that distinction. It is true they are all militia, at least they are what you might ca' the active militia, and the other the reserve militia.

Q. During all that day that you spent with Col. Mengel and Col. Gray was anything said of any sort, kind of character, about the sending of the equipment to Louisville, or about the approaching election?

A. I think there was something said about sending the equipment to Louisville; as I told you, i think there was something said between them and Genl. Collier about the equipment of the regiment.

Q. That was their purpose in seeing him?

A. Yes, sir; but nothing said about any election.

Q. If there is anything else touching this matter about which you desire to be heard I will ask you to state it?

A. I can not recall anything just now I suppose that about covers my connection with this case.

Cross-examination by Mr. McQuown:

Q. Will you state the date of the organization of the Bowling Green company?

A. I stated it a moment ago—June 30th, 1898.

Q. How long after it was organized before it was furnished with the usual arms and equipments?

A. My recollection is in a very short while; but as I told you a while ago, I think the arms that were furnished them were what was known as the Springfield, caliber fifty, old gun.

Q. How long after they were furnished with these arms and equipments before they were required to send them in to Frankfort?

A. I don't know, sir.

Q. You spoke of their having been turned in?

A. I heard so.

Q. Was it not about a week or ten days before the November election that they were to return these arms and equipments?

A. I can not tell you, sir. I don't think I gave any order of that sort. I don't remember.

Q. Is there any record anywhere of such an order?

A. I don't remember.

I will say to you, Col. McQuown—you may not know the manner in which those things are done—frequently the adjutant-general, that is the custom, and he always says in those orders, "By order of the Government." And this is necessarily done very frequently without the Governor knowing anything about it.

Q. You spoke of their having been taken away from that Bowling Green company; and you also stated the additional fact that they had not been returned during your term of office?

A. I can state this, gentlemen, and that is only from what I have heard, I understood that these fifty-caliber rifles were sent back by the company—whether ordered back or not I do not know, but that the purpose was to give them in the place of the fifty-caliber gun, a new gun. I do not know much about these guns, but I think this new gun you have a band around here to put the cartridges in, and in the other you have——

Q. I am trying to get at the fact whether these arms—guns were ever returned to them, or other guns?

A. If they have been, I don't know it.

Q. Where were the guns of the Bowling Green company—what disposition made of them?

A. I don't know.

Q. Is there any way by which you could find out and let me know when it was those guns were ordered away from the Bowling Green Co., and what disposition was made of them?

A. Suppose I can ask the adjutant-general; I can call on him to furnish me any such records or information that he may have.

Q. Will you get the date and file it?

A. I will get it if there is any such thing.

Q. You spoke of the political affiliation of some of

these companies. I will get you to state if you do not know it to be a fact that the Bowling Green company is composed almost, if not entirely, of Democrats?

A. I say to you very frankly, sir, I do not know. I should think, from the locality that it is. I should think also that the company in Franklin, in Simpson county, is composed largely of Democrats; and some of the others, for instance, at Morgantown, I should think that was Republican; that is a Republican community.

Q. When did this gatling gun go from Lexington to Louisville?

A. I was trying to recollect that a while ago. Somebody stated. I think that it got to Louisville on the 6th. My impression is, gentlemen, that I ordered it there on the 5th, as I told you in the beginning, as a precautionary measure.

Q. At whose instance?

A. After consultation with Col. Mengel and Col. Gray.

Q. On the Lexington trip?

A. No, sir; on Sunday, in Louisville.

Q. Then you ordered it to be sent to Louisville after you had gone to Louisville, and had that conference with them?

A. Yes, sir; but I will say this, that I had promised these gentlemen I would return these two guns to them, and they had asked for them before that.

Q. Did you order the gun to be brought in from Pewee Valley?

A. Yes, sir, and so stated. And I will give my reasons. The Pewee Valley company was a very unfortunate company. I think fifteen or eighteen of the company had been court-martialed and had been found guilty, including among the number a lieutenant. A captain, as I understood, had left the state and gone to Indiana. There were only a few men in the company—I should say twenty-odd, and they had asked to be mustered out, Col. Williams told me up at the encampment; and he had recommended that they be mustered out; and they were finally mustered out. And I told the Louisville people to take charge of that.

Q. You ordered it to Louisville after conversation with Col. Gray and Col. Mengel?

A. That was my statement.

Q. You have stated that the Board of Trade asked for the formation of the regiment at Louisville?

A. Yes, sir.

Q. Is it not a fact that that regiment was formed very largely of Republicans?

A. I don't know, Mr. McQuown.

Q. Is it not a fact that Col. Gray and Col. Mengel are Republicans, and have voted and acted with the Republican party in the last campaign?

A. There is no question about Col. Mengel being a Republican; but at the time these gentlemen were elected I thought Col. Gray was a Democrat.

Q. Is it not the general understanding, and was it not your understanding, that the Board of Trade is, and has been regarded, as nothing more nor less than a Republican headquarters in the city of Louisville?

A. During what time?

Q. During the past year?

A. I can say to you frankly, gentlemen, I did not know anything about it. If I was ever at that Board of Trade in my life, I do not remember it. My understanding of it was that it was a mixed body of men, some Democrats and some Republicans; it may have been a headquarters.

Q. You spoke of Democrats in Louisville. Do you mean the "Blown in the bottle" variety you spoke of a while ago or do you mean Brown Democrats?

A. I will tell you frankly that there are so many sorts of Democrats that it is impossible for me to keep up with them. I notice that some voted for Mr. Goebel that did not vote for Mr. Bryan; others who did not vote for Mr. Goebel, and voted for Mr. Bryan; and others that voted against Mr. Bryan and Mr. Goebel. I suppose you mean by "Blown in the bottle" variety the article that voted for Mr. Goebel.

Q. Men who voted for the nominee of ths party?

A. Always?

Q. Yes, sir.

A. I don't know about these gentlemen, but some of them I know were not for Mr. Goebel.

Q. Passing over that matter, how many political Republican speeches—because I know that is the sort you made—did you make during the past campaign?

A. It would be very hard for me to state, going along making speeches on a train, it is pretty hard to keep up with them; I should say fifteen speeches anyway.

Q. State, if you remember, who were on the train with you making speeches, where you started from, and to what point you went and how long engaged?

A. I made three speeches before I started on that round—Owensboro, one at Louisville and one at Ashland.

Q. And when did you start on the train?

A. I do not remember the date of it, but it was not a great while before the election. I remember that when I wound up at Lexington that night I went on to Louisville, as I told you.

Q. Who was on the train with you?

A. There were a great many men on that train from first to last.

Q. I mean who accompanied you on that speech-making tour?

A. The whole distance I do not remember anyone who accompanied me making speeches all the way around except Col. A. T. Wood.

Q. Was Senator Deboe of the party?

A. No, sir; no, sir; Gov. Worthington went to quite a number of places.

Q. Was Gov. Taylor of the party?

A. No, sir.

Q. Where did your train start from?

A. From Ashland.

Q. You went to where?

A. Went—I think the last speech was at Lexington.

Q. How did you travel to get to Lexington is the question?

A. We came down the Ohio river.

Q. Maysville?

A. Yes, sir. Made a speech at Maysville. We came down that way and stopped over night at Covington and spoke at Covington. The next morning we went up on the Cincinnati Southern road, and spoke all the way to Junction City; and then turned from Junction City across to Stanford, from Stanford to Lancaster, from Lancaster to Richmond, and from Richmond back to Lexington.

Q. How many days were you engaged in making that trip?

A. Two days and then the speech at Lexington over.

Q. How often did you make speeches along the way?

A. That would be impossible for me to tell, because I kept no account of it; sometimes I did not speak.

Q. Who else spoke?

A. Some of us spoke everywhere. Either Gov. Worthington, Col. Woods or myself. Mr. Earlywein, my private secretary, made several speeches, I do not remember anybody else speaking.

Q. You are an old campaigner, are you not?

A. I reckon I am, sir.

Q. How many times have you canvassed Kentucky for Governor on the Republican ticket?

A. On the Republican ticket, I never canvassed the State but twice.

Q. Once you were elected, and the first time you were defeated. How many times have you canvassed the State when you were not a candidate?

A. Speaking of canvassing the entire State I do not think I ever did except when I was a candidate for Governor. I have canvassed a considerable portion of the State repeatedly. I believe my first political speech was made in 1870.

Q. And you have been at it ever since?

A. I think one year I was in the hospital down here that I didn't get out; and then when Mr. Bailey ran since I was Governor. I did not get into that campaign.

Q. What day was it you arrived in Louisville?

A. I can't tell you; it was the Saturday night before the election.

Q. Did you make your speech at Music Hall on Saturday night?

A. Yes, sir.

Q. And you made two other speeches that night?

A. Yes, sir; two short speeches.

Q. Was it in the Music Hall speech that you expressed the wish that you might travel upon the wings of the lightning, or something of that sort?

A. Yes, sir; something of that sort; I think a little better than was stated in the newspapers, and by the way I will state to you gentlemen exactly what I had reference to when I said that. The burden of my speech was the election law, which I conscientiously think now to be an exceedingly dangerous law. I was speaking of my apprehensions about it and my convictions, and did say in connection with that substantially what was reported in the Courier-Journal.

Q. Well, now, you had been traveling on the cars and speaking?

A. Yes, sir; I had been, and frankly say to you that was not as fast as I would like to have gone.

Q. Your zeal in the cause, then, impelled you to express a desire for a more rapid transit than the locomotive?

A. That is correct, sir.

Q. You got up the next morning about ten o'clock, you say?

A. Yes, sir; I would like to have it understood that it was not on my account, but on Col. Landrum's.

Q. You read the Mayor's proclamation, and then you say people came in excited and began to talk to you about it?

A. Yes, sir.

Q. Who were those people?

A. Mr. McQuown, I could not tell you to save my life.

Q. You have named a number of persons—?

A. I think some of those same people came in there who were in there Sunday night. I may have gotten mixed up and confused some who were there on Sunday with some who were there on the other days. I think it is safe to add that on that Sunday during the day up to bedtime at night there were fifty people who came there, and I cannot remember them. My recollection is that some newspaper correspondents were among them. I know they were very thick on Monday.

Q. These people that came were either Republicans or Brown Democrats, or what they call them down there "Honest Election League" people?

A. I will say to you very frankly that I did not certainly know that to be true; but I am inclined to think that is true.

Q. You believed they were either Republicans or Brown Democrats?

A. Yes, sir; or what they call the Honest Election Leaguers.

Q. And that none of them were representatives of what we will call the straight Democratic ticket?

A. I don't think they were; I don't know how Dr. Reynolds stands. You have said that he didn't talk to you about this matter at all?

A. No, sir; my recollection is that he did not. I am not positive.

Q. You knew that Gen. Duke and Mr. Helm were, of course, very strongly opposed to the election of Mr. Goebel?

A. Yes, sir; I knew that.

Q. And the ticket that he was upon?

A. Yes, sir. In justice to those gentlemen I wish to say that I do not know that they had anything to say about calling out the troops. They may have said it, but I do not remember it.

Q. The next day you have stated that these people—the same character of people—people of reputation—some of the same people, continued to talk to you about it, returning to the Galt House again?

A. Yes, sir.

Q. And finally they asked you to call out the militia?

A. That was on Sunday night.

Q. What was it you said to them?

A. I told them I would not call the soldiers to the

armory—that was the request that was made—that I would not do not except upon affidavits.

Q. Now, these gentlemen you have named—Mr. Calloway, Richard W. Knott, James I. Stewart, Mr. Robert Cochran, John B. Baskin—upon the next day furnished you affidavits, or some one furnished you the affidavits of those gentlemen I have named?

A. Yes, sir; that is correct.

Q. And those affidavits I will get you to state if it is not a fact that they seek to arraign the officers in the City of Louisville, including the Chief of Police, the gentlemen composing what is known there as the Board of Public Safety, the Board of Jefferson County and the Jailer of Jefferson County?

A. That is my recollection, sir; the affidavits will show.

Q. Did you, Gov. Bradley, before you tried in your own mind, and passed judgment upon all these officers as unfit and unworthy to have charge of the militia, in the event that it should be called out, did you give any of these gentlemen notice of the fact that these charges were being preferred against them; and that you were hearing this testimony against them with a view of determining to have charge of the militia in the event it should be called out?

A. I did not; and I will give the Board my reason for it. In the first place, I had read in the newspapers—the current newspapers—the charges as to what took place at this primary election, and at the convention down there. I have been told by a number of these people after I reached Louisville about those matters, and those people had represented to me a most serious state of affairs, to wit: I mentioned this as testimony under the ruling of your honors, as competent only to show the reasons that actuated me, and not for any other purpose, because I do not want to trench upon the rulings of the board—I was informed, and had seen it in the newspapers, that the police took charge of that primary election, and took charge of that convention, and ran both of them in a high-handed manner; and when I read the proclamation of the Mayor, as I stated to you awhile ago, stating as unlawful the assembling of people at the polls, it struck me as a very peculiar statement for a Mayor to make, because I could not tell how the people of Louisville were going to have an election unless you had the people assembling at the polls

Q. You say that you had heard and read in the newspapers the charges concerning the action of the police in reference to that primary election?

A. Yes, sir; and I had a number of people to tell me about it.

Q. These gentlemen who called to see you at the Galt House?

A. No, sir; from gentlemen before that, and gentlemen who were not in that company.

Q. I will get you to tell to this Board if Mr. Henry A. Bell, the Sheriff of Jefferson County, or Mr. John R. Pflanz, the Jailer of the county, were charged with having anything to do with that primary election?

A. I do not remember about that.

Q. Mr. Bell is the Sheriff of Jefferson County, and as such is the chief peace officer, just as the Sheriff in any other county of the Commonwealth—is not that true?

A. I have no doubt of that, sir.

Q. And is there not a provision in that statute which you have read to the Board authorizing the Governor to place the militia in the command of the Sheriff of a county?

A. Yes, sir; I may do so, under the statute.

Q. Well, what objection did you have to trying at least to find out and ascertain whether Mr. Bell was a suitable person to take charge of the militia in the event you desired to call it out?

A. I knew some of these gentlemen who had talked with me, and had known them for a long while, some of these gentlemen who made affidavits, and I had perfect confidence in those gentlemen, that they would not swear to a lie. As to those that I didn't know, I made inquiry of gentlemen in whom I had confidence, and was assured that they were reliable, straight-forward citizens.

Q. Well, you mean that your information was that Henry A. Bell, Sheriff of Jefferson County, and John R. Pflanz, the Jailer of Jefferson County, were unreliable, incompetent and improper persons to take charge of the militia in the event it should be called into service in the City of Louisville?

A. The information is contained in the affidavits.

Q. Well, upon those affidavits you tried these gentlemen, without notice to them, and decided that they were unfit persons; is that not true, Governor?

A. As I told you, those affidavits were filed during the day on Monday, the exact hour I don't remember; but my recollection is, that some time in the afternoon, and I didn't try those gentlemen at all—there was no trial, but I came to the conclusion from what I had seen in the newspapers, from what I had heard, from the Mayor's proclamation, from the article in the Courier-Journal,

and in other newspapers, that there was a very dangerous condition of society, and that it was my duty to take charge of those troops and command them, and I knew that I would not use those troops for any improper purpose.

Q. Well, now, Governor, don't you think it would have been at least fair, having consulted the Brown, or Honest Election Democrats, and having consulted the Republicans, to have at least given the other side a hearing, or a notification of your purposes and intentions to put the city in the hands of the military, and to exclude these officials who are designated by the statute to have control of the military—doesn't it strike you, as a fair man, that it would have been right and proper for you to have sought, in some way, before you took that step, to have ascertained from these gentlemen, who were the officers designated by the statute of the County of Jefferson, something of their fitness to command?

A. I become satisfied beyond all question, that to put those soldiers in the hands of any of these men would only make matters worse, because these other people had no confidence in them, and I had perfect confidence in myself. I knew I had the right to take charge of those State Guards, and I knew that if I did take charge of them, that they would not be used to forward the interest of any political party in the city of Louisville, but that the public peace would be maintained. I knew that, and consequently I didn't take time to investigate into these other matters, when I was bound to have known that had I put those soldiers under the command of these people, it would have only made the matter worse. My recollection, too, is, in that connection, Mr. McQuown, that I was told that if this was not done, the probability was that hundreds of men would go to the polls armed, and that there would be a conflict; and that I was further told that if I would take charge of those soldiers myself, that they would not go armed, that they would not have any difficulty, but that they would feel that everybody would be protected, and that there would be no riot.

Q. Now, Governor, you say that about fifty people saw you on one day; that was Sunday, I believe?

A. Yes, sir; I think at least fifty.

Q. And about how many Monday?

A. Well, I should say as many more.

Q. You didn't go out in the city and mix with the people of Louisville generally?

A. No, sir; nor did I send for those people to come to see me.

Q. Well, I say, you didn't go out and mix with the people of Louisville?

A. No, sir; I did not.

Q. You know a great many people there, do you not?

A. Yes, sir; I know a great many people there.

Q. You didn't make any inquiry outside of these Honest Election Leaguers, who flocked to the Galt House and sought you, and gave you the information which you have detailed?

A. I did not, sir. The other people could have come just as these came, had they desired to do so, but they didn't come.

Q. Do you know that the Mayor, or the Sheriff, or the Jailer, or any of these gentlemen knew what the Honest Election Leaguers were swarming around you for?

A. I don't know, sir.

Q. So far as you know, they didn't have any information about that, and you didn't communicate it to anybody, did you?

A. No, sir; I don't know anything about that, whether they had any information, or not.

Q. You kept your purposes, I presume, and your conversation and discussion with these gentlemen, a secret; That is, so far as it not being divulged to the press or the public?

A. Well, I don't know, sir; I didn't keep it any secret my door was not locked, part of the time was open.

Q. Well, you talked to these gentlemen?

A. Yes, sir.

Q. You didn't announce your purpose to the newspapers by talking to the correspondents?

A. I don't think I did; I am not in the habit of announcing my purposes to the newspapers, because I am mostly misrepresented when I do; I don't mean to say intentionally.

Q. Now, you have spoken of Judge Harris; is he not one of those Brown Democrats?

A. Well, I will frankly say to you, Mr. McQuown, I don't know about Judge Harris.

Q. Col. Bullitt?

A. Well, he is—yes, sir.

Q. He is the gentleman who testified before this Board?

A. Yes, sir; I know he was a Brown man.

Q. He is a nice gentleman, but he is not a man of very high prejudice, and intense feeling, as expressed very plainly before the committee here when he testified?

A. I will say this about Col. Bullitt, gentlemen, I

have known Col. Bullitt for a number of years, but never knew him intimately. I knew him when I saw him, had a passing acquaintance with him. I knew he was a man of high character, but until he came there that night, Mr. McQuown, if I ever had a conversation of any length with him, I don't know it.

Q. You didn't send for him?

A. I did not; he said that he understood that I wanted him, or had sent for him.

Q. You hadn't sent for him?

A. I had not.

Q. But he is a man of very strong convictions, and strong prejudices?

A. Well, I think he is; I think he is a positive man.

Q. And he was one of the gentlemen who gave you a good deal of this information, and with whom you had a good deal of this talk?

A. Yes. sir.

Q. Now, you said to these gentlemen who came to you like Mr. Bush, and Mr. Huhlein and Mr. Jarvis, that you could not think of sending a company of soldiers down to a poll for the purpose of requiring the vote to be cast more rapidly, or to put inspectors in, when they came and made application to you for a company of soldiers, to have those voters admitted?

A. Well, I hardly said that, Mr. McQuown.

Q. What did you say, in substance, Governor?

A. I said I would not send soldiers to the polls in order to hurry up the officers of the election, or to take part in any way in the election. As to the other matter, I said to those gentlemen, "I know nothing about Mr. Toney's order, and while I do not by any means impune the truthfulness of what you say, I know nothing about it, and I can not act upon it."

Q. Well, you then said to them, or in conversation was it not suggested by somebody that if Judge Toney would write you a letter, that you could then act upon it?

A. No. sir; I never said anything of that sort.

Q. Well, didn't somebody make that statement?

A. I did not hear it; I think that this question was asked possibly, I am not certain, but I think somebody, probably Mr. Bush, or the other man, said, "Well, suppose Judge Toney calls on you in this matter?" My response was that, "I will not climb that hill until I get to it; it will be time enough for me to act on that when I am called upon."

Q. After those gentlemen had come to see you, and you had declined to send the soliders, either to hasten the

voting or to assist in having the inspectors admitted, you received this letter which you have read, from Judge Toney?

A. Yes, sir.

Q. Was it upon this letter that you ordered the soldiers out?

A. Yes, sir; and had it not been for that letter, the soldiers would not have left that armory, unless some trouble had occurred.

Q. I will ask you, as a lawyer, whether you regard it the duty of the Governor of the Commonwealth, whenever an injunction is disregarded, which has been issued by a Circuit Judge of the Commonwealth, that upon application, as Judge Toney made application, or representations of the facts as he made it there, that it would be the duty of the Governor to call out the militia to enforce that injunction?

A. Unquestionably true.

Q. Upon what authority, or statutory authority do you base that right or power of the Governor?

A. In the first place, gentlemen, the Governor of the state is an executive officer, as has been held by the highest court in this nation. The Legislature makes laws, the judiciary construes laws, and the Governor enforces. The Constitution requires that I shall see that the laws are enforced, and whenever the order of a court is disobeyed, and the local civil officers to whom that order is entrusted fail to perform their duty, and that fact is made known to the Governor, in my judgment he would violate his oath of office did he fail to take the necessary measure to enforce that order. And I will say this further on that subject, that these things constantly occur; for instance, when these men were executed over here at Newport or Covington, or somewhere, the murderers of Pearl Bryant, I received from the Circuit Judge a communication in which he said that he believed that it would be dangerous to execute those men without the presence of soldiers; that there would be danger of a rescue, or of serious trouble. I immediately sent a company of the State Guard there, and that company did prevent any trouble on that day. And wherever a judge of a court has certified to me that he is unable to enforce his orders or unable to hold his court, I have universally sent soldiers to aid him in the enforcement of the law, and to carry his orders into execution.

Q. Well, Governor, in Newport or Covington, when you sent the soldiers there, at the time Walling and Jackson were executed, under whose command were they

placed; under what civil authority of the city of Covington?

A. I don't remember, sir.

Q. Did they not report to the sheriff?

A. My impression is, I will give it to you, it is not testimony, but I will give it to you—my impression is, to the sheriff; but had somebody informed me that the sheriff could not be trusted, and that the other officers could not be trusted, I would have gone with them myself.

Q. Now, you have stated that whenever a Circuit Judge makes known to you that he is powerless, and the local authorties are powerless to enforce his order, then you think it is a proper case for the calling out of the military?

A. I not only think it is proper, but I think that if I failed to do it, I would violate my oath.

Q. Now, Governor, I ask you if it is a fact that anywhere in the letter of Judge Toney appears any statement that the local civil authorities were incapable, incompetent or not of sufficient power to execute those injunctions, or the orders of his court?

A. I do not remember, gentlemen, the language of the letter without looking at it. "It has been represented to me that these injunctions are being contemptuously ignored and violated. I have issued the decree or judgment of law"—that is his statement—"I am not a ministerial officer, and can not enforce it. I call your attention to this fact, as chief executive of the state, that you may take such action as to see that the laws are executed, as you may deem proper under the circumstances." The letter does not state in terms—in express words that the local authorities had failed to do their duty, but the letter does state expressly that the injunctions were being contemptuously ignored and violated, and as a lawyer I took it for granted, of course, that those injunctions were being disobeyed and violated by the parties whose duty it was to enforce them, or the judge would not have written me that letter.

Q. Now, Governor, is it not a fact that there is nothing in this letter that shows that Judge Toney had ever applied to any civil officer in the county of Jefferson to enforce those injunctions?

A. Well, sir, I didn't look at the letter in that way. There is no express statement to that effect. I knew Judge Toney. I knew he was a good lawyer. I knew that he had the reputation of being a competent judge. I took it for granted when he said that the process was being disobeyed, that he knew what he was talking about.

Q. But still there is no statement in this paper that shows the civil authorities of the County of Jefferson, I mean by that, the ministerial officers in the county of Jefferson, had ever been applied to, and had failed or refused to execute or carry out the mandates of the judge of a court?

A. Nothing but the inference.

Q. It is a bare inference then?

A. It is not a bare inference, it is a plain inference.

Q. Well, do you not think, Governor, that in so serious a matter as setting aside all the officers, civil officers, in a great city like Louisville, setting aside the civil officers of the County of Jefferson, who are designated by the Statute as the proper persons to have control of the military, in the event they are called out in aid of the civil power, that you ought to have required, and ought to have had, from someone at least, a positive statement—I mean, someone in authority, a positive statement that the civil authorities had been applied to, and had failed or were powerless to carry out the orders of the court?

A. I think, sir, as I have tried to explain, that it was my duty under that letter, knowing Judge Toney as I knew him, to do exactly what I did. And I will say further than that, if that letter had stated that he had issued an order to put the Democratic inspectors in these polls, which was being contemptuously disobeyed, that the troops would have been ordered out just exactly in the same way in which they were ordered out under that letter.

Q. Now, you have read to the Board the editorial in the Courier-Journal of November 6th, 1899?

A. Yes, sir.

Q. The day preceding the election. I will get you to state if in that editorial it is not clearly and distinctly stated that this talked of riot, of bloodshed, of violence, was gotten up by a few senseless persons, or illadvised persons?

A. Yes, sir; senseless, I believe, is the expression.

Q. I believe so—that there was no substance in the complaint, and that the city authorities, the civil authorities of the city and county were amply sufficient to preserve the peace, and that they would do so, on the morning of the election?

A. I think that statement is made in the Courier-Journal. That was the estimate of the Courier-Journal of these people. That was not my estimate of these people. I did not think that such men as Col. Bullitt, and men of that character, were senseless persons; and the reason I

didn't read the other editorials is because you have read them already. Some of them I had read. I took all these editorials together.

Q. You didn't hear Col. Bullitt, or these other gentlemen that came to visit you themselves threaten that they would go and participate in any violence or unlawful act?

A. I don't think Col. Bullitt said that, but some of them said, I can not tell you who it was, but I know I heard it more than once, that if something was not done to assure them that the peace would be protected, that they intended to protect themselves, and that was a thing that I did not want to see; and it was said to me that if I would call the soldiers to the armory, that they would not go to the polls armed, but go there quietly and have no trouble. In reading all those newspaper articles, and putting them all together, gentlemen, I felt there was very serious apprehension. I made due allowances for all of them on both sides, knowing well newspapers are sometimes accurate, that they are not always accurate; and it manifested to me, according to my view of the case, a very serious condition of society.

Q. In other words, Governor, is it not true that you believed everything that was told you upon one side of that controversy, and disbelieved everything else on the other side?

A. No, sir—no, sir. I believed some of it both ways, and disbelieved some of it both ways, because, as I said a moment ago, I have lived in this world long enough to know that articles that appear in newspapers are not always wholly reliable. I expect the Board will agree with me in that respect.

By a Committeeman: What about the photographs?

A. The photographs are even worse; at least, I heard Chairman Coleman employ a lawyer to-day to sue a paper of Louisville that had a photograph of him.

One moment, gentlemen. There is one thing that I want to call attention to before I leave the stand. In the matter of ammunition, sending ammunition to Louisville. Mr. Mengel told you that that application was not made to me, it was made to the Adjutant General, but I want to say to you that it is the custom to keep more or less ammunition with these troops, and that after the Legion went to Puerto Rico, my recollection is that 19,000 rounds of ammunition were brought from that armory up here; it was not an unusual thing at all to send ammunition to these companies, because we would have very little use for companies if we didn't have ammunition.

Q. Now, in regard to commission; I want to say an-

other thing, something was said about commissions. The Governor can not issue to a man until he has been elected three months, and a report has been made to him of his fitness. The commission to Col. Mengel was issued to him on the report of Maj. Gray, a man of great capability and fitness to make an examination of that kind, and the man appointed by me to conduct the examination. I have never issued a commission since I have been in office, except on a report of that sort.

John Hunter (Col.), being duly sworn and examined by Mr. Sweeney, deposed as follows:

Q. Where do you live?
A. I live in Louisville.
Q. How old are you?
A. I am about 38 years old.
Q. Were you in Louisville on the 7th day of last November?
A. Yes, sir.
Q. You are a registered voter of the city of Louisville?
A. Yes, sir.
Q. At what precinct?
A. At the 9th precinct of the Twelfth Ward.
Q. Ninth Precinct of the Twelfth Ward?
A. Yes, sir.
Q. Did you go there to vote that day?
A. Yes, sir.
Q. Go ahead now and tell these gentlemen what was required of you, before you were allowed to vote, and about the action of the election officers there at that precinct.
A. I went in and the clerk asked me my name, and I told him; and he found my name on the book, and Mr.—I cant think of his name right now—Ed. Conner, he challenged my vote; he said I didn't have any right there to vote. I asked him why; he said I didn't live where I said I lived. I said I did live there, been living there for nearly two years. He said, "Well, you haven't got no right to vote here, you shan't vote."
Q. Well, go ahead and tell all that occurred—what they required of you?
A. And he says, "You can't vote here until you go out and get two men that pays city taxes and prove that you do live here." Well, I went out and got two men, and they would not take them, and I went out and got two

more, and they took one of them and the other they would not take. Well, I went out to hunt me another man, and I brought the same man that I took there the second time, and they would not take him still. Well, they went out, and I said, "Gentlemen, I am entitled to a vote." Well, they said, "You can't vote here at all." I said, "I am entitled to a vote, and I am not going out of here until I do vote," but they called for the sheriff to take me out.

Q. And would not let you vote?

A. No, sir.

Q. You were a regular, duly registered voter in the precinct?

A. Yes, sir.

Q. How long have you lived there?

A. Nearly two years.

Q. Voted there heretofore?

A. Not right at that precinct, but voted right around there.

Q. You say you have been there nearly two years?

A. Yes, sir.

Q. That was the first time you had voted in that precinct?

A. Yes, sir.

Q. Now, it is the twelfth precinct—you have just got the numbers transposed—it is the Twelfth Precinct of the Ninth Ward?

A. I don't know exactly.

Q. Where is it located?

A. Eighth and Green.

Q. Eighth and Green?

A. Yes, sir.

Q. Isn't it the Twelfth Precinct of the Ninth Ward?

A. I don't know; I don't know anything about the wards.

Q. How far is it from the place you reside?

A. About a square and a half.

Q. You knew that was your precinct?

A. Yes, sir; I registered there.

Q. And you registered there?

A. Yes, sir.

Q. I understood you to say they called the sheriff to put you out, and would not let you vote?

A. Yes, sir.

Q. Do you know of their throwing out any other colored fellows there and not allowing them to vote?

A. No, sir.

Q. Except as to yourself?

A. No, sir; I heard some of them say they did throw some of them out, but I don't know anything about that.

Cross-examined by Mr. Scott:

Q. What was the clerk's name?
A. The clerk's name—I don't know.
Q. You didn't know him at all?
A. I didn't know the clerk's name.
Q. Consequently he didn't know you, did he?
A. Well, he seen my name on the book.
Q. Was your name on the book?
A. Yes, sir.
Q. That may be, but he didn't know that you were the man?
A. Well, I don't know nothing about that part.
Q. Because you didn't know him?
A. I didn't know the man, but he found my name there alright.
Q. And he said to go out and get somebody that knew where you lived?
A. The Democratic challenger told me that.
Q. Told you that?
A. Yes, sir.
Q. Now, had you ever voted in that precinct before?
A. I never voted at that place.
Q. You had moved hadn't you?
A. No, sir; I had not.
Q. Had you lived at the same place for two years?
A. I have been living there for nearly two years.
Q. But you never voted there?
A. Never voted at that place.
Q. Where did you live before that?
A. I lived at Eighth and Grayson.
Q. And where before that?
A. I lived there back of Wathen's grocery, between Grayson and Walnut.
Q. Well, the next time before that, where did you live?
A. I lived around there for about six years.
Q. Lived right around there all your life?
A. Yes, sir; for six years.
Q. If you didn't vote at that place, where had you voted?
A. Well, I will tell you; they moved the voting place two or three times since I lived at that place.
Q. What races had you voted in?
A. I voted there at Wathen's, that is one place I voted once; then I voted there on Ninth, between Walnut and

Grayson—that is the President's election I voted there.

Q. What precinct do you live in?

A. The Ninth of the Twelfth Ward, I first said, I don't know what it is.

Q. You live in the Ninth Precinct of the Twelfth Ward?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Well, one of the men they said they would take when you finally came back?

A. They would take one of them, and would not take the other.

Q. Did the one explain exactly where you lived, that he knew you?

A. Yes, sir.

Q. What about the other?

A. They would not take his word.

Q. Did he know as much about it as the one they did take?

A. Yes, sir.

Q. And you told them you were going to vote anyhow?

A. I told them I was entitled to a vote.

Q. Did you tell them you were going to vote?

A. No, sir; I didn't tell them I was going to vote, I told them I was entitled to a vote.

Q. And you finally went out without voting?

A. Yes, sir.

Re-direct examination by Mr. Sweeny:

Q. You were thrown out by the sheriff, were you not?

A. I was taken out.

Q. Now, you say you had not voted at that same place; you mean, you had not voted in that same house?

A. Yes, sir.

Q. But you voted in the same precinct?

A. Yes, sir.

Re-cross examined by Mr. Scott:

Q. Who paid your expenses up here?

A. I paid my own expenses up here?

Q. Where did you get the money?

Objected to.

A. I worked for it.

Q. Have you been promised any reimbursement—promised that your expenses would be paid?

A. No, sir.

John B. Davis, being duly sworn and examined by Mr. Sweeny, deposed as follows:

Q. Where do you live?

A. 731 West Jefferson, Louisville, Ky.

Q. Were you in Louisville on the 7th day of last November?

A. Yes, sir.

Q. Were you at an election precinct?

A. Twelfth Precinct of the Ninth Ward.

Q. Do you remember this darky that has just testified?

A. Yes, sir.

Q. State the facts about his voting there to the committee, all you know about it.

A. Hunter came in to vote, and was told by the Democratic challanger—

Q. By the challenger?

A. By the Democratic challenger that he had no vote; to go out and get two witnesses that paid taxes—paid city taxes; and Hunter goes out and finally comes back with a negro man and a white man. The white man had been, or rather was election officer, I think he was sheriff at registration, or judge at registration—Republican judge; he lives next door to me and on the same square with this negro, and they would not take this man Railey's talk in regard to the negro living in the place, simply because Railey did not pay any city taxes, but they would take the other man's say. So out he goes and comes back again; finally they refused to allow him to vote then, and he told them that he had a vote, and he thought they ought to let him vote. I think that was the way I understood it.

Q. What connection had you with the polls, if any?

A. I was Republican challenger and inspector, both positions, sir.

Q. Well, was he permitted to vote?

A. No, sir.

Q. Were those the tactics pursued there by the officers of election?

Objected to.

Q. What were the tactics pursued there by the election officers?

Objected to.

Q. Do you know of anyone else coming there that day where they attempted the same tactics?

A. Oh, there was a little drawn out business, it seemed there was a little red cord, with a whole lot of questions,

"Where do you live?" "How many children have you got?" To a great many negroes.

Q. What were those questions?

A. "Where do you live?" "How long have you lived there?" "Does your wife live there?"

Q. "How many children?"—you said something about children?

A. How old he was, and how many children; that had been asked a good many people, and I objected several times, but of course, I was overruled.

Q. Did they ask if they were married?

A. The question was asked, I think, of three or four different men.

Q. Now, I will get you to state to the gentlemen of the committee where the men lived, the Democratic officials at that precinct, lived in the city of Louisville, who acted as election officers there that day?

A. You mean the officers that were appointed there, that were removed afterwards, or not?

Q. Yes, I want the officers that acted that day?

A. Well, the Republican clerk and the Republican judge were removed.

Q. Well, where did they live?

A. And they were replaced, the Republican judge was replaced by a man by the name of Harry Allen.

Q. Where did he live?

A. I think his residence is 731—if I may look at a card I have.

Q. Yes, you can refresh your memory.

A. I just made a memorandum of it—Harry Allen, 731 West Green.

Q. What kind of a place is that; is it a respectable place, or a whore house?

Objected to.

A. I think it is a pretty rough house, myself.

Objection overruled.

Q. What kind of a place is it?

A. Why, I said it was rather a rough neighborhood; it is supposed to be what they call the red light district. I am a married man, I have got no right to talk about those kind of things.

Q. I will ask you if it wasn't a whore house?

A. I said I am a married man, and I don't like to talk about those things, but it is nothing more than a whore house. Then the other officer, the Republican clerk that we placed a man by the name of Will Robinson, the colored man that had been clerk at registration, I remember

registering and he took my name, was Frank Lundley, 731 West Grayson.

Q. Same kind of house?

A. Yes, sir; I judge so—I haven't been around those places lately. These were registered Republicans that replaced the Republican officers.

Q. I will ask you the question if they asked the question of the voters, and didn't prevent voters from voting there because they claimed they had been divorced from their wives?

A. No.

Objected to.

Q. Were all those officers there at that election Democrats?

A. Well, the other two officers were Riney Croxton, lives at 714 West Jefferson; that is a very nice neighborhood, I think—at least I hope it is; I live on the other side of the street below him; and Joe Bloom, he is the Democratic judge; he is at 720 Green Street.

Q. Now, about the counting of the vote; tell the committee about that?

A. We had a Democratic challenger there to, Ed. Conners, at 742 Green street.

Q. Now, tell the gentlemen of the committee about the counting of the vote there; what occurred about the counting of the vote there?

Thereupon the Board adjourned until Monday, January 29th, 1900, to two o'clock p. m.

Frankfort, Monday, January 29, 1900.

The Board met pursuant to adjournment this day at 2 o'clock p. m.

Gov. Bradley was asked the following questions by Mr. McQuown, for the contestants:

Q. I show you what purports to be a copy of a statement made by you in reference to your action in calling out the troops in Louisville, printed in the Louisville Courier-Journal of December 11, 1899. Please examine it and say whether that is a correct report of your statement?

A. I would like to have time to read it before I would say.

Q. Certainly.

A. I can answer the question at any time you want me to. Or I will read it now, if you prefer.

Q. You can read it.

A. I don't know whether I wrote a statement or gave it in the shape of an interview.

Mr. Phelps: You can put the answer in later whether it is correct or not.

George J. Brown, a witness, being duly sworn and examined by Mr. Kohn, testified as follows:

Q. Please give your full name to the Commission?

A. George J. Brown.

Q. What is your business?

A. I am a blacksmith.

Q. Where do you live?

A. I live in West Louisville, in Jefferson county.

Q. In the western part of Louisville?

A. Yes, sir.

Q. What precinct do you live in?

A. I live in what they call the West Louisville Precinct.

Q. How long have you lived in Louisville?

A. I have lived in Louisville since 1891—March 26, 1881.

Q. You say you are a blacksmith; whom do you work for?

A. I work for Mr. Philip Eisenminger.

Q. I will ask you whether you were in Louisville on the 7th of November last—election day?

A. Yes, sir, I was.

Q. What position at the election did you fill?

A. I filled the position of sheriff.

Q. At what precinct?

A. At West Louisville precinct.

Q. I will ask you to state whether or not you were present prior to the election at room 405 Equitable Building?

A. Yes, sir, I was.

Q. Now, I will ask you to tell the Commission all that occurred there; whom you met, what was given to you, if anything, and who was in charge, and all about it?

Objected to.

The Chairman: I think it ought to be confined to the members of the Honest Election League—to the authorities of the Honest Election League.

Q. Mr. Brown, you say you were an officer of election for election day?

A. Yes, sir.

Q. Were you at room 405 Equitable Building just before the election?

A. On Saturday; yes, sir.

Q. Who sent for you?

A. I was notified by Mr. Kelly, young Mr. Kelly—I don't know his first name—Col. Kelly's son.

Q. Did you receive a letter?
A. No, sir, he came personally.
Q. Did you receive a letter to come up there?
A. Yes, sir, I received a letter from Mr. Arthur Wallace.
Q. What kind of a letter head was it—whose letter head was it?
A. It was dated by the—
Objected to.
Q. Have you the letter with you?
A. No, sir, I have not.
Q. What was the letter head—whose letter head was it?
Objected to unless letter is produced.
Q. I will ask you what letter heads they were—was there any printed matter on the letterhead?
Objected to.
The Chairman: Let him state if he knows.
Q. Have you these letters at home?
A. Yes, sir.
Q. Will you send them up here to the Commission?
A. Yes, sir, I will send them.
Objected to.
The Chairman: I don't think any proof about that letter would be competent without the letter itself.
Q. Where was it from—who was the letter from and what kind of a letter was it?
Objected to.
The Chairman: Let him answer the question, "Where was it from?"
Objected to.
A. It was from the Honest Election—Democratic Honest Election Democratic Headquarters.
Q. Whose name was signed to it?
A. Arthur Wallace.
Q. Did you know Arthur Wallace?
A. I had known him, yes, sir, for a short time.
Q. Did you go there and see him?
A. Yes, sir.
Q. How many times were you there?
Objected to, as it was the Honest Election Democratic Party, and not the Honest Election League.
Q. What did Mr. Wallace say to you when you came up there? What did he do?
Objected to.
Q. Did Mr. Wallace give you anything?
Objected to.
The Chairman: Unless some member of one of those organizations said authoritively that there was no such thing as that done it would be incompetent evidence, but if one of them as a member of the organization, said that it did not occur, then this would be legitimate testimony.

Q. Will you please tell what occurred in that room, and who was in charge of the room?

Objected to.

The Chairman: Mr. Hickman, I am directed by the Board to rule that the question is competent.

And the same ruling was made by the Chairman of the other Board.

Q. Will you answer the question who was in charge of the room, who had the talk with you?

A. Mr. Wallace.

Q. Just tell what occurred?

Objected to.

Q. What did he give you?

Objected to.

Q. Just state what acts of ownership he showed there, how he showed he was in charge of the room?

Objected to, objection overruled.

Q. Just state what occurred, please?

A. Do you want any other gentleman's name besides—

Q. You can tell all that occurred there, speak out loud?

A. I went to the room, summoned up Saturday previous to the election, and there was Mr. Kelly, Dr. Blanton, Arthur Wallace and Mr. Taylor. So they stated to me there, "Mr. Brown he says—he counted me out thirty-five dollars. He said—

Q. Who did that?

A. Mr. Arthur Wallace handed me the money personally. He says, "Here is the dividend for West Louisville precinct," he says "This is to be used as a legitimate campaign fund," and I asked him, I said, "In what way, Mr. Wallace, do you suppose that I shall use this?" He said, "In getting conveyances for disinclined democrats that don't seem to want to come to the polls to vote, employ wagons and drivers, and bring them to the polls?"

Q. What other instructions did he give you at the same time?

A. He said, "Work in perfect harmony, Mr. Brown, with the Republican party." That was his words.

Q. What other monies were there at the time he gave you this money?

Objected to, objection overruled.

A. There was a great deal of money there in piles, I can't say how much, didn't have the least idea, but there was a desk, those business men's desks, that was at least three by four feet anyway, with those coverings, you know, a secret desk, and on that desk there was piles of money, just about the same amount, in each pile, it seemed to me, like as what I got.

Q. You were then an election officer.

A. Yes, sir; I was sheriff.

Q. What election?

A. Of the election in West Louisville precinct.

A. Committeeman. When was this?

A. This was on Saturday just preceding the election.

A. Committeeman. What party were you representing?

A. I was working, I was considered a Brown Democrat up until Mr. Bryan came to the State of Kentucky to take the stump for Goebel. I made mention before that if Bryan came to the State and took the stump for Mr. Goebel that I was a Goebel man. After that I worked for Goebel.

Cross-examined by Mr. Breckinridge.

Q. When you took this money, you took it as a Goebel Democrat?

A. Well, sir; I took it just because they gave it to me, not as a Goebel Democrat.

Q. Used—what did you do with it?

A. I kept, it, for my own personal—

Q. You used it for your personal advantage?

A. Yes, sir.

Q. You spent it for yourself?

A. Yes, sir.

Q. And that is a sort of a Goebel Democrat you are?

A. Yes, sir.

Q. (Judge Yost) What Kelly was that?

A. It is a young Mr. Kelly.

Q. What Dr. Blanton is that?

A. That is Dr. J. W. Blanton at Pleasure Park.

Q. What Mr. Taylor is that?

A. That is J. Strother Taylor. That is the way he signed his name.

Q. (By Mr. Kohn) Signed his name to what?

A. To the papers.

Q. Will you send those letters you got from the Honest Election League.

A. Yes, sir.

John M. Tully, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. I believe you are one of the Assistant Chiefs of the fire department of the City of Louisville?

A. Yes, sir.

Q. I will ask you if you had a conversation with Mr. Cobb, the Reporter of the Post, just before the election, Irvine Cobb? In a room of the Board of Safety, one of the rooms of the Board of Safety, that is the large room, the reception room next to the office of the Board before the election?

A. Not before the election, no, sir.

Q. Did you at any time before the election at that room or any other place say to him, speaking in reference to the November election, which was to be then in a few days, to be held, did you say to him that you were sorry, that the firemen didn't want to have anything to do with the election, didn't want to take any part, but that you had to do it to hold your position, or words in substance to that effect.

A. Do I understand you to say to that particular election?

Q. To that election, yes?

A. No, sir.

Q. Did you say anything about it at all before the election?

A. Not before the election, no, sir.

Q. No statement of any sort made to him about it.

A. Not before the election.

Cross examined by Col. Breckinridge.

Q. You are an officer of the fire department?

A. Yes, sir.

Q. You did have a talk with Mr. Irvine Cobb in the Safety rooms—in the rooms of the board of Public Safety?

A. I never had no conversation with Mr. Cobb in particular. I did have a conversation in there with a number of gentlemen and he was present.

Q. And it was in the rooms of the Board of Safety?

A. Yes, sir; after the election.

Q. And it was about the interference by the police or by the firemen in elections?

A. It was in regard to an ordinance that was about to be passed by the General Council in Louisville.

Q. And the subject was interference by the firemen in elections?

A. Yes, sir; something to that effect.

Q. And you did say in that if the firemen were let alone they would prefer not to take part in elections?

A. No, sir.

Q. What do you say about that?

A. You want me to state the whole facts of this?

Q. Yes.

A. It was after the election sometime, I don't know when exactly, but it was about the time they were talking of passing an ordinance in the city council prosecuting the firemen in case they took part in the election. There were a number of us in the office of the Board of Safety, Mr. Cobb, Mr. Bronner, Mr. Wakefield.

Q. Give their first names?

A. I don't know the first names. Mr. Pflanz, the jailer, and Mr. Ed. Tierney of the board of Public Safety; and the conversation came up about this ordinance. I think it was Mr. Tierney said it was a very good thing, the firemen ought to be kept out of elections, out of politics. I said if

they wanted to keep the firemen out of politics they should legislate to protect them in a change of administration. I said I didn't know any firemen that was anxious to go to the polls, I didn't think the firemen were asked or had to be asked to go to the polls, they were there in self protection like any other man, if he thought that he took a chance of losing his job, he went to try to hold it. That is the conversation.

By Mr. Kohn—That was after the election?

A. After the election.

Q. (Mr. Breckinridge resumes.) Then, if I understand you aright, there was a conversation in the rooms of the board of Public Safety?

A. Yes, sir.

Q. At that conversation Mr. Cobb was present?

A. Mr. Cobb was there.

Q. And the subject of that conversation was the connection of the firemen with elections, and in that you made the statement that if the firemen didn't take any part in the elections they ought to be protected in their vote?

A. Yes, sir.

Q. And that the firemen were not anxious to participate or interfere in elections?

A. That is, in substance, the conversation.

Q. Your recollection is that this occurred after the election?

A. After the election, I am positive of that.

Q. Can you identify when it occurred?

A. I can't give exactly the time. It has been since this new General Council has went in down there. It is in regard to the ordinance that they were talking of passing, which has been passed since.

E. S. Beaumont, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. Please state your place of residence and your occupation?

A. I live in Mayfield, Graves county.

Q. Mayfield, Kentucky, and a printer?

A. Yes, sir.

Q. How long have you been in the printing business?

A. February, 1869.

Q. Over thirty years?

A. Thirty-one years next month.

Q. How long have you lived in Graves county?

A. Thirty-three years.

Q. I will ask you to state whether or not you printed the ballots—official ballots for Graves county for the last election?

A. Yes, sir.

Q. I will now show you the stub-book produced here and state whether or not—

A. Yes, sir; that is the stub-book.

Q. I want you to tell the commission what paper you printed it on, and all about it?

A. I used paper, twenty-eight by forty-two, eighty pounds to the ream, sized and super-calender.

Q. I will get you to state what that is, please explain what that means?

A. The super-calender paper has a great deal of size in it, extra calender size, and S. C. size, and super-calender is an extra finish, extra fine finish. It is fine glazed.

Q. That is what they call eighty pound paper, and twenty-eight by forty-two sized?

A. Yes, sir.

Q. That is about four sheets to the—four ballots to the sheet?

A. No, that made four sheets—four ballots to the sheet.

Q. Now, I will ask you to state whether or not you have been accustomed to printing the ballots for Graves county?

A. Yes, sir.

Q. I will get you to state whether or not that paper was heavier or thinner paper than usually used in Graves county?

A. It is ten pounds heavier than I ever used before.

Q. Why was that?

A. Mr. Coulter, the county clerk, was very anxious about it, and he said he wanted me to take extra pains to get the best paper we could have, for the reason that we had a local option election, there was some complaint about that election. They had only about seventy pounds before that.

Q. Was that before that?

A. Yes, sir, this same year, though, it was in September, and he wanted me to be extra particular about it.

Q You were extra particular?

A. Yes, sir.

Q. You furnished an eighty pound paper?

A. Yes, sir.

Q. What did you do in order to get that paper?

A. I wrote to St. Louis. A house I bought it from. They didn't have but seventy pounds in stock. Then I telegraphed to Cincinnati, to Chatfield, Woods & Co. and they misunderstood my telegram and sent me two samples—

Q. Was the same ballots used throughout the county?

A. Yes, sir,

Q. And same kind of paper?

A. Same kind.

Q. Is that the stub?

A. Yes, sir; I made twenty-seven books.

Q. Same kind of stubs and same kind of ballots?

A. Yes, sir.

Q. I will ask you to state whether or not it was possible for any person desiring to see a vote, how a voter voted, how he had voted, after it had been folded a single fold on that paper?

A. Yes, sir; I think it——

Q. Did you vote?

A. Yes, sir.

Q. State both as a voter and an expert?

A. They couldn't see through mine, the one I gave, because I tried it myself.

Q. You tried to see through it and could not?

A. Yes, sir.

Q. From the character of the paper, could they see it?

A. I think not, unless they had extra fine eyesight.

Q. There is a Mr. Green, was a witness in this case from Graves county, did you speak to him about it, anything said to him about the paper?

Objected to.

A. Mr. Green talked to me about—but I am not the one, probably, that you want.

J. R. Thomas, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Will you tell the gentlemen of the Board where you live?

A. I live in Mayfield, Graves county.

Q. Were you an officer, or in anywise connected with the holding of the election on the 7th of November last?

A. Yes, sir; I was a challenger in our ward there; first ward of Mayfield.

Q. Is that the same precinct in which Mr. Happy was an officer?

A. Mr. Happy was inspector at the election.

Q. Did you see the ballots that were used at that precinct at that election?

A. Yes, sir; I saw them.

Q. I will ask you to say to the gentlemen of this commission whether those ballots, printed as they were on the paper they were, could be seen by looking at the back of the ballots?

A. Well, I was there all day and acted as inspector, and we had a very light room upstairs in our county court building; and I had, I think, every opportunity to see if it could be done, and I could not see how a single man voted in our precinct. In fact, I wanted to see how a few people voted and I couldn't tell.

Q. Did you make any effort to see how the ballots were voted?

A. Yes, sir; I wanted to see how a few people in our precinct voted and I couldn't tell how anybody voted.

Q. What was the reason you tried to see their ballots?

A. I reckon I was like everybody else; I had a few people I looked to see how they voted; we had some doubt about, and I would have been glad to see.

Q. Was it possible, even with that effort you made, to see how anybody voted?

A. No, sir; I don't know, nor then I couldn't have told how a single man voted except myself.

Q. Did you hear, during the day, anybody, any officer in that election, say or claim that the ballots could be seen through?

A. No, sir; no complaints made that I know of, I never heard any.

Q. Did you vote yourself?

A. Yes, sir.

Q. Did you handle the ballots?

A. Yes, sir; I had one of the ballots.

Q. Could you see through the one you voted?

A. I don't know that I paid any special attention to mine more than others. I was challenger, and I was all around the table where the votes were received, where the ballots were received, and at every point of compass of the man that handled the ballots, and I don't know that I paid any more special attention to my own than I did to others, but during the day I noticed when we first voted, we had a Republican clerk, and several times I called his attention to the fact he hadn't signed the back of the vote of the ballots and I watched it pretty closely on that account.

Q. It wasn't possible to see anything about it?

A. No, sir; I don't think a man could tell anything about it.

Q. Did Mr. Happy, in that precinct, that day, make any complaint about the ballots?

A. Mr. Happy was not in there until after the voting was over. He came in as inspector. I was a challenger and I was not there that time. Mr. George took my place after that.

Q. Up to the time you left Mr. Happy hadn't come?

A. Mr. Happy hadn't been there. I don't know what he done after I left.

Q. Will you tell the commission how long you have lived in that county and city?

A. I voted in that ward all my life. I never voted any where else except in that ward, but I at one time lived in the country three miles for two or three years, but I voted in town.

Q. What is your business?

A. I haven't any special business. I have been in the sheriff's office nearly all the time for the last four or five years.

Cross-examined by Col. Breckinridge.

Q. What is your present occupation?
A. I haven't any.
Q. How long has it been since you have been engaged in your present employment?
A. Well, I haven't had any regular work for eight or ten months. Before that time for three or four years I had been deputy sheriff through Mr. Cook's term and part of Mr. Dorsey's, our present.

O. T. George being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Where do you live?
A. Mayfield.
Q. How long have you lived in Mayfield?
A. Ever since 1890.
Q. What is your business?
A. Deputy county clerk.
Q. Were you an election officer or connected in any way with an office in the past election in Mayfield?
A. I was inspector in the first ward.
Q. Was that the same precinct that Mr. Happy was inspector?
A. The same precinct, yes, sir.
Q. What time of the day did you go into the polls?
A. Just as soon as the polls closed.
Q. At what time did Mr. Happy go into the polls?
A. At the same time; we went in together.
Q. Will you please state to the gentlemen of this commission whether Mr. Happy had any opportunity to see the ballots or to see through the ballots, explain how the people were sitting at the count?
A. The table was about three or four times as large as this (ordinary office table sitting north and south). Mr. Happy sat at the south end. I sat right over there on that corner, and the lamp was a little—
Mr. Kohn: Give which side.
A. I was on the west side, near the southwest corner; the clerk of the election was at the north end, the two sheriffs of election—the two judges at the northeast corner. Mr. Happy was keeping tally and I was keeping tally, and the ballots were never called until they were taken out and spread on the table, and Mr. Happy never paid any attention to those ballots only when they disagreed as to who they

should be counted for, and then we all examined the ballots spread on the table. We had no chance to see, to tell whether he could see through the ballots or not, as he didn't handle any of the ballots.

Q. I will ask you to state whether or not during the progress of that count there was any complaint made or any criticism as to the thinness of the ballots or as to the fact that you could see through the ballots?

A. No, sir; there was nothing said about it then.

Q. And as a matter of fact, could you see through the ballots and tell how people had voted without looking at the votes?

A. No, sir; I don't think you could. I examined my ballot and I held it to see if I could see, and I couldn't tell anything about it at all.

Q. You saw all the ballots that were handled at that precinct during the count; was there any one that you saw through at all?

A. No, sir.

Q. From the position of the parties, was your opportunity as good or better or worse than Mr. Happy's?

A. As good as Mr. Happy's.

Q. Did Mr. Happy make any remarks about the matter of the ballots during the count?

A. Yes, sir; he said near the close of the count if every precinct—if the election at every precinct had been conducted as fairly as the first ward in Mayfield, he would be perfectly satisfied. He said he thought everything had been conducted very honorable there and he had no objections to make, and he left the room before we got through making the certificates.

Q. Did anybody during the progress of those votes that you have related—during the counting of the ballots—make any criticisms or complaint about the ballot or its texture—the texture of the ballots?

A. No, sir; nothing said about it, and everybody seemed to be well pleased.

Charles M. Bright, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Will you give the gentlemen your full name?

A. Charles M. Bright.

Q. What is your business?

A. I am working for the Singer Sewing Machine Co.

Q. Where is your home?

A. My home is in Mayfield. I moved to Mayfield the 2nd day of January, but my home has formerly been at Fancy Farm.

Q. Fancy Farm?
A. Yes, sir.
Q. Is that a precinct—Fancy Farm precinct?
A. Yes, sir.
Q. It is in Graves county, Kentucky?
A. In Graves county.
Q. Is that the precinct where Mr. Carrico was an officer?
A. Yes, sir.
Q. The gentleman that said he had so many kinfolks in that precinct?
A. Will Carrico; I don't know about that.
Q. What office did Mr. Carrico hold at that election?
A. He was a judge.
Q. What were you doing in that poll?
A. I was sheriff of the election.
Q. Were you there a part of the day or all of the day?
A. All of the day.
Q. Did you vote?
A. Yes, sir.
Q. At that precinct?
A. Yes, sir.
Q. Did you handle a ballot or any ballots?
A. I handled only the one that I voted.
Q. Did you see or examine that ballot?
A. I did. I got too much ink on my stencil, and they didn't have any blotters there, and after I folded it, I unfolded it then half-way—we folded them four times down there, and I unfolded that half-way to see if it stained through, and I couldn't see through it and I went on and voted, it was all right.
Q. Did you see whether, even with it blotted as you have described, you could see through it?
A. Yes, sir.
Q. Could you see through it?
A. I could not.
Q. I will ask you to state whether, during the progress of that election, you being there as the sheriff, there was any objection or criticism made by any person during the day as to the ballots being thin?
A. No, sir.
Q. Did anybody say anything of that kind?
A. They did not.
Q. Did you hear any complaint of that kind?
A. No, sir.
Q. Mr. Carrico said that the Democratic judge told him that he could see through the ballots?
A. Yes, sir.
Q. Tell the gentlemen about that?
A. I will explain that, how it was. That night when we were taking the ballots—we had a large lamp, it was in a

hall it had a round burner, one of these swinging lights. We taken it down and sat it on the table to count the ballots. I was sitting, Mr. Carrico, Will Carrico to my left and Joe Carrico to the left of him, and the clerk over here to my right at the end of the desk, and Joe Carrico—the ballot box down there—he would take out the ballots and call off, and then he and Will would look at it, and he would hand it to me and I would put it on my knee, and watch the clerk put it down. After he called it, democrat or republican, whatever the case might be, then it would take the clerk some bit to run down and make the tally, he would reach in and get another ballot out and open it half, and he could see through before he unfolded it by holding it between him and the light how it was.

Q. In front of this big light?

A. Yes, sir; and he would punch—one of the Carrico's was a democrat and the other a republican—he would punch the other fellow whenever it would be democratic, and finally some of them says—Luce Carrico says: "How do you fellows tell that"? They just cast it between him and the light. Then we all caught on the way they could tell it was to hold it between them and the light.

Q. With the daylight, without any artificial light right behind the ballot, could you see through it?

A. Say, in a room like this, you couldn't see through it, no, sir.

Q. But with a lamp, that big round burner put there in front of them, could see through it?

A. They said they could, and I am satisfied they could, because they passed it between Luce and the light and we caught on that is the way they could tell it.

Q. That was after they partly opened it?

A. Yes, sir; unfolded it once.

Q. How long have you lived in that county?

A. I lived out of the county—I moved out of the county twice, but didn't live there long. The county line is within a mile of Fancy Farm. I have lived there all of my life outside of those two moves, just a mile or two from town, was into another county, Carlisle.

Clem J. Whittemore, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Where do you live?

A. I live in Mayfield, Graves county, Kentucky.

Q. How long have you lived in that county?

A. About thirty-four years.

Q. Were you at any of the precincts on election day in that county?

A. Yes, sir; I was challenger in the Third ward, in the city of Mayfield.

Q. Is that the same precinct at which Mr. Keyes was an officer or challenger?

A. Yes, sir.

Q. What was he doing there—he is the gentleman that testified here the other day?

A. He was judge of the election, I think.

Q. That is the same precinct?

A. Yes, sir.

Q. Did you vote at that precinct?

A. I did.

Q. Did you have in your hand a ballot or any ballots during the day?

A. Yes, sir.

Q. Did you examine the ballot?

A. I did.

Q. Will you state to the gentlemen of the Commission as to whether that ballot was thin enough to see through?

A. No, sir; it was not.

Q. I will ask you whether you made any careful inspection on that subject, or whether it was only casual?

A. There were quite a number of gentlemen, on account of an agreement that had been made before, I was anxious to see how they voted, whether or not they voted the Democratic ticket, and when they voted, I got right over Mr. Keyes, who was folding the ballots—they were returned folded once, and he folded them again and put them in the box. I got right up over him, near him, to try to see if I could determine how these people had voted, and in no case was I able to tell.

Q. Did you see Mr. Keyes there?

A. I did.

Q. I will ask you to state whether during the day he made any complaint or charge as to the insufficiency or thinness of that ballot?

A. I left the place about twenty minutes to go to my dinner, and the rest of the time I was there during the count and during the voting, and I heard no remark whatever in regard to the ballots.

Cross-examined by Col. Breckinridge.

Q. What were you doing there; what was your position?

A. I was challenger.

Q. For the Democratic party?

A. Yes, sir.

Q. You were not there when the ballots were counted?

A. I was there when the ballots were counted.

Q. You were inspector, too?

A. Yes, sir.

Q. Both challenger and inspector?
A. Yes, sir.

Frank George, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Where is your home?
A. Mayfield, Graves county, Kentucky.
Q. How long have you lived in that county?
A. Thirty-seven years.
Q. What is your business?
A. Painter and paper hanger.
Q. Were you living in Graves county in Mayfield on the 7th of last November, election day?
A. Yes, sir; I was.
Q. Did you take any part in the election?
A. I was sheriff in No. 3 ward.
Q. You were sheriff in No. 3 precinct?
A. Ward.
Q. Or ward, as they call it?
A. Yes, sir.
Q. Is that the same ward or precinct, the same voting place, where Mr. Keyes was an officer?
A. Mr. Sebe Keye, yes, sir.
Q. He was the Republican officer—S. F. Keyes, his name is?
A. Yes, sir; he was one of the judges.
Q. What office did you fill?
A. Sheriff.
Q. Did you vote at that precinct?
A. Yes, sir; I did.
Q. Did you see or did you handle any of the ballots.
A. I handled my ballot. I helped to count the ballots after the vote was over.
Q. Will you tell the gentleman of this commission whether those ballots were thick or thin, I mean whether you could see through them by looking at the back or not?
A. No, sir; I don't think you could, I couldn't see through any of them.
Q. Did you look at them?
A. Well, sir, I looked at mine.
Q. Couldn't see through yours?
A. I did not, no, sir.
Q. I will ask you to state whether during the progress of the election there was any talk or criticism or complaint from anybody to the effect that the ballots were thin and could be seen through?
A. No, sir; there was not.

Ed. Coulter, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. You are Mr. Ed. Coulter?
A. I am.
Q. You are a brother of Mr. Gus Coulter, are you?
A. Yes, sir.
Q. Where do you live?
A. I live at Mayfield, Ky.
Q. How long have you lived in that county?
A. All my life.
Q. What is your occupation?
A. An attorney-at-law.
Q. Were you an officer of or connected in any way with the election on November 7th last?
A. I was.
Q. At which precinct?
A. At ward No. 2 of the city of Mayfield.
Q. Do you know Mr. Green, the gentleman who testified here the other day?
A. Yes, sir.
Q. What office did you fill at that election?
A. I was inspector and challenger at that ward.
Q. Then you were there during the vote and during the count?
A. I was there from the time the polls opened in the morning until the vote was finally counted and certificates written out.
Q. Do you know Mr. Green, the gentleman who testified here the other day?
A. I do.
Q. Was he there?
A. Yes, sir.
Q. Did you, during the progress of the vote, while sitting up in a window above the officers, or on a shelf above the officers, make a remark in effect that you knew ten negroes who had promised to vote for Goebel, and you had watched the ballots, and not one of them had voted as promised, or words to that effect?
A. I did not.
Q. Did anything of that kind occur at that precinct?
A. No, sir.
Q. I will ask you whether or not, with those ballots printed on the paper that they were, you could see the printed matter by looking through or could see the stencil?
A. No sir; I don't think you could.
Q. Did you, from the position you occupied, look at the ballots, or critically examine them?
A. Yes, sir; I saw nearly all of them that were placed in the box.
Q. I will ask you whether you saw through—saw the printed matter or the stencil through any of them?

A. I did not.

Q. I will ask you to state whether ballots of the kind and quality that were there used, it was possible by looking through to see the printed matter or the stencil?

A. I don't think it was possible.

Q. Did you vote?

A. I did.

Q. Did you have a ballot?

A. Yes, sir.

Q. Did you examine that?

A. Well, not especially, I don't think.

Q. Did Mr. Green say anything during the progress of the election about the ballots or the election?

A. When the polls were closed in the evening at four o'clock and just before we began to count up the vote, Mr. Green said that if the election in the state of Kentucky was as fair in every precinct as it was in that one, that the Republicans would be perfectly satisfied, and that he was only surprised in one thing, and that was that the democrats had allowed the Republicans to run in and vote five or six negroes in the ward that they hadn't expected to vote.

Q. I will ask at the suggestion of Judge Yost whether you said that only a dead negro would vote the Democratic ticket, or anything of that kind?

A. I did not.

Cross examined by Col. Breckinridge.

Q. There was no agreement of any sort that any negroes should vote the Goebel ticket that you are aware of?

A. No, sir.

Q. None that you had anything to do with?

A. No, sir.

Q. Or none that you had heard of?

A. No, sir.

Q. So if you had happened to say that you expected some of those negroes, or wanted to see whether any of those negroes had voted for Mr. Goebel it wouldn't have been a true remark about there being any expectation on your part that any negroes would vote for Mr. Goebel?

A. I didn't happen to say anything of the sort. I never made any remark of that description.

Q. Was there any foundation, any truth, for such a remark?

A. Not to my knowledge; no, sir.

Q. And nothing was said about a negro vote at all that day except that Mr. Green spoke of five or six negroes?

A. No, sir; not that I recollect of now.

Q. Can you recollect all that occurred that day?

A. No, sir; I can't recollect every word that was said there; no, sir.

Q. Can you recollect all the chaffing that went on from the time you opened the polls at seven o'clock till you closed the count at night between the various there?

A. No, sir.

Q. Did you examine to see whether those ballots could be seen through.

A. I never took one and held it up between me and the light. I watched the whole procedure in the polls and putting them in the box, and I know I never saw through them.

Q. You are the brother of Mr. Gus Coulter?

A. I am.

W. L. Hale, a witness called for contestant in rebuttal, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. You are a son of Major H. S. Hale?

A. Yes, sir.

Q. Where is your home?

A. Mayfield, Ky.

Q. How long have you lived in that county?

A. I have lived in that county 28 years. I call it my home. I was up here five years.

Q. Were you present at any precinct in Mayfield, or any of the wards, I believe you call it, on election day last?

A. I was sheriff of ward No. 2 in Mayfield.

Q. Is that the same precinct in which Mr. Green was clerk?

A. Yes, sir.

Q. Was Mr. Ed: Coulter in that precinct on that day?

A. Yes, sir; he was challenger of the same election.

Q. What place did you fill?

A. Sheriff.

Q. Were you there during the voting and counting of the vote?

A. Yes, sir; all day until the votes were counted.

Q. Did you see Mr. Ed. Coulter there?

A. Yes, sir.

Q. I will ask you whether during the progress of that election Mr. Ed. Coulter sat up on a shelf and said, or said at all, in effect, that ten negroes had promised him to vote for Goebel, and he had watched their ballots, and not one of them had kept their promise; and that no one but a dead negro would vote the democratic ticket?

A. No, sir; I never heard anything to that effect.

Q. Were you there all day?

A. Yes, sir; all day.

Q. Did you see the ballots that were used at that precinct?

A. I did, sir.
Q. Did you vote one?
A. Yes, sir.
Q. I will ask you what you have to say about the quality and thickness of the ballot used there?
A. I didn't look particularly to see the way anyone voted; had no curiosity to know; I voted my ballot and just as I got out of the booth, going from the booth to the box, I noticed it from the back side and could not see through it.
Q. You looked at your own ballot when you voted?
A. Yes, sir; I was present when they were being put in the box, and could not see how anybody voted.
Q. Did you hear any criticism made by anyone at the time as to the quality or thinness of the ballot?
A. No, sir.
Q. If that was made you did not hear it?
A. No, sir.
Q. I believe you were Deputy Treasurer of the State of Kentucky under your father?
A. Yes, sir.

No cross examination.

Milton Bronner, a witness called for contestant, in rebuttal, being sworn and examined by Mr. Kohn, deposed as follows:

Q. What is your business?
A. Newspaper reporter.
Q. What paper?
A. The news.
Q. I will ask you if you were present at the office of the Board of Safety when the conversation referred to by Mr. Coke and by Mr. Tully to-day in his testimony?
A. Yes, sir.
Q. Was that before or after the election?
A. After the election.
Q. You heard the statement that Mr. Tully made here to-day?
A. Yes, sir.
Q. I will ask you if his statement is a correct statement of what occurred there at that meeting?
A. Yes, sir.
Q. How long was that after the election?
A. I don't know how long; after the Republican General Council went into office.
Q. Sometime after the election?
A. Yes, sir.

Cross-examination by Col. Breckinridge.

Q. Will you state that conversation as near as you can?

A. We were all talking about some proposed ordinance that one of the Republican councilmen was going to introduce, with the hope of taking the firemen out of politics. Captain Tully—no, Ed Tierney, a member of the Board of Safety, says, it would be a mighty good thing to keep them out, and stop all this squabbling; and then Capt. Tully said that no fireman electioneered for the pleasure in it, that if they did it at all, they did it to keep their jobs; that if the Republicans came into office and found a lot of Democrats in the fire department they would put them out and put in their friends; and every man had to look after his position.

Q Was any reference made to the squabbling of the firemen in politics?

A. No, as he mentioned it they were not anxious to take a hand in politics, but that they did it as a matter of self protection.

Q. What was it Mr. Tierney said?

A. He said he thought it would be a good thing if they could keep the firemen out of politics.

Q. What was it that Mr. Ed Tierney said about if they had such a law it would prevent all such squabbling?

A. He said it would keep them out of politics.

Re-examination by Mr. Kohn.

Q. They were then discussing the ordinance which was pending before the council about the firemen?

A. Yes, sir; there was some talk of the ordinance to take the firemen out of politics.

Q. Not referring to the election of November 7th, 1899?

A. No, sir.

Q. By a member: Did that take place before or after the election?

A. After the election.

James Kinnarney, a witness called for contestant in rebuttal, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. Where do you live?

A. Louisville.

Q. How long have you lived in Louisville?

A. All my life.

Q. What is your business?

A. Police officer.

Q. How long have you been connected with the police department of the city of Louisville?

A. Since January 6, 1888.
Q. Do you know Dr. D. T. Smith?
A. Yes, sir.
Q. Are you the James Kinnarney who was a police officer watching at one of the precincts with Henry Olges, another police officer in Louisville on election day?
A. Yes, sir.
Q. I will ask you whether Dr. D. T. Smith came to your precinct on election day and appealed to you for any help and was refused?
A. No, sir.
Q. Did anything of that kind occur.
A. No, sir.
Q. I will ask you whether Dr. D. T. Smith came there with that injunction or notice, and that they were taken away from him and he then called on the officers to protect him and they refused to do it?
A. No, sir.
Q. I observe in the testimony of Dr. Smith that he locates the precinct at which he came, and at which you were located as Clay and Main street. Did the doctor even get the precinct correct?
A. No, sir.
Q. Where was that precinct?
A. Jackson and Jefferson.
Q. Did the doctor come to your precinct?
A. Yes, sir.
Q. Will you give the gentleman an idea of how far it is from Clay and Main to Jackson and Jefferson, your precinct?
A. Four blocks.
Q. That would be about a quarter of a mile?
A. Yes, sir.
Q. I believe we have twelve blocks to the mile, and that would be about a third of a mile?
A. Yes, sir.
Q. I will ask you whether Dr. Smith on that occasion had his papers taken away from him and called on you and Officer Olges for help and you refused it?
A. No, sir.
Q. Did anything of that kind occur?
A. No. sir.

Cross-examination by Col. Breckinridge.

Q. Do you know where my brother Phelps got the statement about it being Clay and Main?
A. No, sir.
Q. Did you see Dr. Smith?
A. Yes, sir.
Q. And nothing occurred at all, did there?
A. No, sir.

Q. Not a thing; he didn't have any papers?
A. Yes, sir.
Q. Didn't even attempt to read any papers?
A. He did read the papers.
Q. Nobody interfered with him?
A. No, sir.
Q. Nothing occurred except the reading of the papers?
A. That is all.
Q. Who else was at the precinct?
A. Officer Olges was with me.
Q. Who else?
A. I suppose one hundred people around there.
Q. Who was the Republican inspector?
A. Hiram Ager.
Q. What became of him?
A. He was fighting on the inside.
Q. Did you interfere?
A. When the Republican called me in.
Q. What did you do with Mr. Ager?
A. I got hold of him and asked him to come; and the sheriff got hold of him and we brought him to the door; and Dr. Miller struck me and knocked me down.
Q. Tell the board all that took place?
A. I ran after Dr. Miller—he is a horse doctor—and found a pistol on him and locked him up.
Q. Did you do anything else?
A. No, sir.
Q. Was there a hambrick inspector there?
A. I don't know whether he was a hambrick inspector or not; he is an old time Republican.
Q. Who?
A. Hiram Ager.
Q. What was he fighting about?
A. Fighting on the inside.
Q. What about?
A. I don't know; we had orders not to go into the polls to interfere.
Q. And nobody interfered with Dr. Smith at all?
A. No, sir.
Q. He read the entire paper through?
A. He did.
Q. Then what did he do?
A. He got into the buggy and went off.
Q. Who was with him?
A. I don't know; another gentleman with him.
Q. Who was that other gentleman?
A. I don't know.
Q. You say you helped to get Agers out of the voting place?
A. Yes, sir.

Q. Who told you to do that?
A. The Republican sheriff.
Q. By what authority did you put him out?
A. I was called in by the sheriff.
Q. Who was that Republican sheriff?
A. His name was Wagner.
Q. Where does he live?
A. On Preston between Green and Jefferson, the corner of an alley; he is a cigar manufacturer.
Q. What was his name?
A. Wagner.
Q. What is his first name?
A. I don't know; I think it is William Wagoner; he has a cigar factory.
Q. How many votes cast at that precinct?
A. I don't know.
Q. What is that precinct?
A. I think the second of the Fourth ward.
Q. Was there any disturbance of any sort at that ward during that day?
A. Not until Hiram Ager started it.
Q. Was there anybody who asked to get in as Brown inspector?
A. No, sir; they looked for the Brown inspector but he was not there; he was gone away.
Q. Who was that?
A. Candidate on the Brown ticket, John Burke, for councilman.

Re-examination by Mr. Phelps.

Q. Who was it called to you for help?
A. The Republican sheriff.
Q. Who was it put this man Agers out?
A. Me and the Republican sheriff; we ordered him to go on out without having any more trouble.
Q. Why did he want to put him out?
A. He went in there before the polls closed,—about a quarter past three or half-past three, and stopped the voting.
Q. You went in only when called by the Republican sheriff?
A. Yes, sir; myself and Mr. Olges.

Re-cross examination by Col. Breckinridge.

Q. What time was it you put him out?
A. About half-past three.
Q. Did you put him out before four o'clock?
A. Yes, sir.
Q. Did he get in again?
A. Yes, sir.
Q. What time?

A. About ten minutes to four.
Q. What happened then?
A. He stayed in there.
Q. Did Dr. Smith give any reason why he read that injunction?
A. No, sir; we didn't interfere, we didn't want to go into the polls at all. We had strict orders not to interfere in any way with the election.

Re-examination by Mr. Kohn.

Q. Strict orders from whom?
A. Chief Haager.
Q. You obeyed those orders?
A. I did.

Henry Olges, a witness called for contestant in rebuttal being duly sworn and examined by Mr. Phelps deposed as follows:

Q. Your name is Henry Olges?
A. Yes, sir.
Q. Where do you live?
A. Louisville.
Q. How long have you lived in Louisville?
A. About forty-one years.
Q. What is your business?
A. Policeman.
Q. Were you acting at any precinct in the city of Louisville at the last election in November?
A. Yes, sir.
Q. What precinct?
A. In the Fourth ward, second precinct.
Q. Where is that?
A. Jackson and Jefferson.
Q. Was there any other policeman at that precinct?
A. Yes, sir; Mr. Kinnarney.
Q. The gentleman who has just testified?
A. Yes, sir.
Q. Any other officers except you and him,—I mean policemen?
A. No, sir.
Q. You know Dr. D. T. Smith?
A. No, I don't know him; I seen him there that day.
Q. That gentleman who came there with some papers and read them at the door?
A. Yes, sir; I seen him there.
Q. I will ask you whether this Dr. Smith came to you and Mr. Kinnarney as policemen, for protection on that occasion, and you refused to give it him?

A. No, sir.
Q. Did anything of that kind occur?
A. No, sir; not in my observation.
Q. I will ask you whether anybody took his papers away from him and he appealed to you for help,—or anything of that kind occurred?
A. No, sir.
Q. Were any papers taken away from him and torn up in the presence of the policeman?
A. I never heard of anything of that kind.
Q. Were you there by Mr. Kinnarney when he entered the polling place that day?
A. Yes, sir.
Q. What time of day was that?
A. About twenty minutes, or half-past three; somewhere along there.
Q. Did you go in?
A. Yes, sir.
Q. How did you happen to go in?
A. The sheriff called us.
Q. Who was the sheriff?
A. William Wagoner; he is a cigar maker.
Q. Democratic or republican sheriff?
A. A republican.
Q. You went in on his call?
A. Yes, sir.
Q. What did he want with you?
A. He wanted us to take Mr. Ager out of there; he was in there fighting and he wanted us to take him out.
Q. I will ask you whether the republican sheriff took any part in putting him out?
A. He ordered him out and he would not go.
Q. And then what took place when he would not go?
A. We took him by the arms and led him out.
Q. I will ask you whether or not Mr. Kinnarney interfered in any way with that election; or Dr. Smith at that precinct?
A. None whatever; we had strict orders not to interfere with the election?
Q. I will ask you whether you were in the voting place any other time, except after the republican officer called you?
A. That is the only time.
Q. This man Agers that you put out at the request of Wagoner, the republican sheriff, what business did he have in there?
A. Why, he was one of the delegates—I don't know what he was—an inspector or something.
Q. Did the inspector have any right in there at twenty minutes past three or half-past three?
A. No, sir; he had no right in there until four o'clock.

Q. Was he prevented from going and performing his duties afterwards?

A. No, sir; he walked in; they had trouble in there and they got to fighting.

Q. While the fighting was going on the officers came in?

A. No, sir.

Q. You know whether he went back at four o'clock.

A. He went in there after that, yes, sir. I went to the door and looked in and I seen him in there about a quarter to four or ten minutes to four.

Q. Was he taken out again?

A. No, sir; he stayed in there then.

Cross-examination by Col. Breckinridge.

Q. Who were the officers of election at that precinct?

A. Wagoner is the only one I know.

Q. Don't you know the judges?

A. No, sir; I don't know the judges.

Q. Know the clerk?

A. He is a young man that keeps a grocery between Jefferson and Market at the corner of an alley; I don't know his name.

Q. Who is the challenger in the inside—the Republican challenger?

A. I don't know.

A. I don't know who they were.

Q. Do you know whether there was a Democratic and Republican challenger in there?

A. I expect there were, but I didn't know any of them; I don't live in that neighborhood.

Q. Where does Mr. Wagoner live?

A. On Preston street between Green and Jefferson on the corner of an alley.

Q. What is his occupation?

A. Cigar business.

Q. Do you know when he was appointed sheriff?

A. I don't know when he was appointed but he was there at the time.

Q. Do you know whether he was appointed at all—whether the election commissioners appointed him that morning?

A. I could not say.

Q. Do you know whether he was a Davis or Hambrick Republican?

A. Could not say that either I don't know.

Q. Do you know whether he was a Davis or Hambrick Republican?

A. I know he is a Republican is all I know about it.

Q. Mr. Wagoner been a Republican all his life?

A. Yes, sir.

Q. You don't know whether they were on the same Republican side or whether one was a Hambrick Republican and one a Davis Republican or not?

A. I could not say.

Q. Do you know a gentleman by the name of Slusher?

A. Yes, sir; I know him.

Q. Did you see Mr. Slusher that day?

A. I seen him around there.

Q. What time did you see Mr. Slusher there?

A. About three o'clock.

Q. Did you see Mr. Slusher and Dr. Smith anyway close together?

A. No, sir.

Q. You were not there when Mr. Slusher, Dr. Smith, if he did hit him?

A. I never seen him hit him.

Q. Did you see Mr. Slusher in any way pass the compliments of the election to Dr. Smith while you were there?

A. No, sir.

Q. Were you absent from that precinct at any time?

A. No, sir.

Q. If anybody struck Dr. Smith, you did not know it?

A. No, sir; not that I know of.

Q. Nobody interfered with Dr. Smith?

A. No, sir.

Q. Nobody knocked him down?

A. No, sir.

Q. You didn't see him lose his spectacles, and somebody pick them up and hand them to him?

A. No, sir.

Q. If that occurred, it occurred when your back was turned?

A. There was at one time about three or four hundred people there, up close to the polls.

Q. Now, at that time, to refresh your memory—just for the purpose of recalling it to your mind—when Mr. Slusher was close up to the polls—did not you see him up close to the polls there?

A. I could not say. I kept running them back.

Q. Is not Mr. Slusher quite conspicuous, rather more conspicuous than most citizens who gathered there that afternoon?

A. I could not say.

Q. Mr. Slusher, a part of his life, has been a prize fighter?

A. I am not acquainted with the gentleman.

Q. You know he has been a prize fighter?

A. Yes, sir.

Q. You know at that time he was close up to the polls?

A. Yes, sir.

Q. Was he there about the time Dr. Smith was—did you see him?

A. I could not say whether he was there just then or not.

Q. You do not recall?

A. I was just keeping the sidewalk clear and I don't know who was there all the time.

Q. Your orders to keep the peace did not include, did it, Mr. Slusher and Dr. Smith; you were engaged at that time in keeping the sidewalk clear?

A. That is all.

Q. If any little thing occurred like that—like knocking an old man down—Mr. Smith down by Mr. Slusher, did not interfere with your keeping the sidewalk clear?

A. I never seen that.

Q. There was at that time about 500 people there?

A. Mr. Kinarney was knocked down, and I never seen that.

Q. So that your vigilance, on that occasion, was aroused by the purpose of keeping the sidewalk clear, and not for the purpose of seeing whether a fellow was knocked in the head or not?

A. No, sir; I didn't see even Mr. Kinarney hit.

Q. You did keep the sidewalk clear?

A. Yes, sir.

Q. Although you could not see the knocking down of an old man, you did keep the sidewalk clear?

A. Yes, sir.

Re-examination by Mr. Phelps.

Q. The gentleman has asked you whether Mr. Slusher was not a prize fighter?

A. Yes, sir.

Q. Mr. Slusher is one of those fighters that never want to fight?

A. Yes, sir; he always came out second.

Q. Never has been in a fight where he has not been whipped?

A. Yes, sir; always whipped.

Q. You say you did not interfere with Dr. Smith in any way?

A. No, sir.

Q. I believe Dr. Smith is one of our experts on lunacy, is he not; don't he teach lunacy in the schools—don't he lecture on the subject?

A. I don't know whether he is or not. I ain't well acquainted with him.

Re-cross examination by Col. Breckinridge.

Q. You say that Slusher is always second best in the prize fights he has been in?

A. Yes, sir.

Q. In the prize fight he had with Dr. Smith that day, if

there was one, do you know which one came out second best?

A. No, sir; I don't know.

Q. That was one of his fights, the history of which did not concern you?

A. No, sir.

Q. You did not feel interested at all in that prize fight?

A. I never seen nothing like that.

Second re-examination by Mr. Phelps.

Q. If you had seen anyone interfering with Dr. Smith, would you have arrested them?

A. Yes, sir.

Q. If you had seen him knocked down would you have arrested the man who did it?

A. Yes, sir. Kinnarney was knocked down and I never seen that; so many people standing around there.

Second re-cross examination by Col. Breckinridge.

Q. Are you at all certain that anyone knocked Kinnarney down?

A. Yes, sir; that is what he told me.

Q. Are you at all certain except from his statement that he was knocked down?

A. He was knocked down.

Q. That is what he told you?

A. Yes, sir.

Third re-examination by Mr. Phelps.

Q. And he locked up the man by himself?

A. Yes, sir.

Third cross examination by Col. Breckinridge.

Q. Is the fact that a policeman locks a man up conclusive evidence that the policeman has been knocked down, or the man who has been locked up has been knocked down?

A. I don't know.

Re-examination by Mr. Kohn.

Q. Was not the man arrested and a pistol found on him?

A. Yes, sir.

Q. What was done with him?

A. Kinarney got the wagon and sent him to jail.

Q. Was he pardoned for having that weapon?

A. Yes, sir.

P. F. Tully, a witness called for contestant in rebuttal, being duly sworn and examined by Mr. Phelps, deposes as follows:

Q. Where do you live?
A. Louisville.
Q. How long have you lived there?
A. All my life.
Q. Are you connected with the police department?
A. I have been in the police service for fifteen years.
Q. Do you hold any office in the police?
A. Corporal of police; that high office.
Q. Were you at the 22nd precinct of the 12th ward on the last election day?
A. Yes, sir; I was stationed there.
Q. Do you know Mr. William Dumeyer, the gentleman who testified here?
A. Yes, sir; I know him. There are two of them.
Q. Did you know the Mr. Dumeyer who was down there.
A. Both Dumeyers was down there.
Q. I will ask you whether at that precinct on election day you forced Mr. Ben Gregory and Charles Shriver into the precinct?
A. No, sir; Charles Shriver was one of the election officers.
Q. Did you force Ben Gregory into that precinct?
A. No, sir; I would not force him anywhere. I did not want to talk to Mr. Gregory; I do not like him.
Q. Did you have anything to do with his entrance into that precinct?
A. No, sir.
Q. They spoke of Ben Gregory; what is he?
A. He was at one time the deputy clerk of the city under Mr. Klaud, the Republican clerk.
Q. Do you know whether on the election day he held any connection with the Republican party?
A. From what I read in the newspapers—from what I understand—I did not look at the records of the Republican party; he was one of the Republican executive committeemen from the city of Louisville, on the Davis committee.
Q. I will now ask you—it has been related here about the coming of Mr. Dumeyer to that precinct—what, if anything, did you have to do with the occurrences there?
A. I had nothing to do with him. After the polls were closed Mr. Dumeyer went in there. I don't know whether he presented any credentials or not. I stood in front of the polls and the Republican sheriff put him out. I heard Mr. Dumeyer—heard him say you will have to put me out to the sheriff, and the sheriff got hold of him and led him out. I said don't handle the man roughly, he is a nice man; I was standing there; he just got him by the arm and led him out. I was standing there looking.

Q. Did you have anything to do with it?
A. No, sir.
Q. He was the Republican sheriff of the precinct?
A. Yes, sir; a young fellow by the name of Neville.
Q. Did you interfere in any way with the matter?
A. I never said a word and never interfered at all; never touched anybody at all.
Q. This man Dumeyer claims to have been put out; was he put out by the Republican sheriff of that precinct?
A. Yes, sir.
Q. Did you help?
A. I never touched him and never said a word; he didn't call on me to hold him.
Q. I will ask you who it was, if anybody, who announced the vote at the close of the voting that day?
A. The clerk.
Q. Do you know where made the announcement?
A. Right in front of the polls.
Q. Was there any trouble about his making the announcements?
A. No trouble at all.
Q. Anybody interfere with it?
A. Not that I seen.
Q. Any other announcement made?
A. None at all.

Cross-examination by Col. Breckinridge.

Q. Mr. Tully, who were the officers of the Twenty-second precinct of the Twelfth ward?
A. John Quill was the clerk.
Q. What was his politics?
A. Democrat.
Q. Who next?
A. Charles Shriver.
Q. What was his politics?
A. Democrat.
Q. Mr. Quill and Mr. Shriver were the two judges?
A. He was the clerk.
Q. Who was the other one?
A. Mr. Nebel and Mr. Newbill.
Q. Mr. Newbill, what was he?
A. Republican.
Q. Did either of those gentlemen belong to the Hambrick or Davis faction?
A. I could not tell whether they were Hambrick Republicans or Davis Republicans. I could not tell what kind of Republicans they were.
Q. You know when these officers were appointed?
A. No, sir; I know nothing about their appointment.
Q. Was that result announced publicly twice?

A. No. sir.

Q. Are you certain of that?

A. It might have been declared publicly again after we got on the car to go to the court house.

Q. Do you know why that precinct was entirely thrown out and not counted?

A. No, sir.

Q. Do you know why—what occurred at that election that caused the election commissioners to throw that whole precinct out?

A. No, sir.

By Mr. Phelps: Where does that statement come from?

By Col. Breckinridge: From the Courier-Journal almanac, which has been put in evidence.

Q. Was there any disturbance at all at that poll?

A. No disturbance that I seen.

Q. Any disturbance on the inside of the voting place at all?

A. Not anything that called my attention. Everything was nice and quiet, so far as I know.

Q. Who was it that put this witness out?

A. Nevel, the Republican sheriff.

Q. Did he give any reason for putting him out?

A. Because they didn't recognize him as the inspector, I suppose.

Q. Do you know why he didn't recognize him as the inspector?

A. No, sir.

Q. I will ask you whether it was not true that he held his credentials from Mr. Davis and there was another person that pretended to hold a certificate from Mr. Hambrick?

A. I don't know nothing about that; I didn't look at the certificate and didn't ask.

Q. It is a fact that Mr. Dumeyer was put out?

A. He insisted upon the sheriff putting him out; said he wanted him to put him out.

Q. Didn't he say he would not go out unless you put me out?

A. Yes, sir; "you put me out."

Q. Did he speak as if he wanted to go out?

A. He said it as if he wanted to make some capital out of it in some way—Dumeyer did.

Q. Why do you think he wanted to make some capital out of it?

A. It sounded that way. The sheriff said you will have to go out of here; they all said that and he said, "Put me out," and stood there with his hands down, as if he wanted them to put him out.

Q. And they were kind enough to comply with his request?

A. The Republican sheriff took him by the arm and led

him out. He did not want to make any trouble—did not act as if he did and went on out.

Q. You don't know whether they left the Hambrick gentleman in there or not?

A. I don't know whether he was a Hambrick Republican or not; I could not tell a Davis Republican from a Hambrick Republican.

Q. Who was it on the inside?

A. Mr. Gregory.

Q. Who was it that Mr. Gregory had the certificate from?

A. I don't know anything about the certificate; I had no right to see it.

Q. They let Mr. Gregory stay in there and this other gentleman was put out?

A. Yes, sir.

Q. What is the character of Mr. Gregory?

A. I don't believe I know of his doing any wrong; I do not know that the records show anything.

Q. A man of high character?

A. I don't know; I don't know about Mr. Gregory's character; I have known him a long time; he lives in the same ward I live in. I have never seen him do a wrong deed.

Q. What is he doing now?

A. I don't know what he is doing.

Q. What was his occupation on election day?

A. I don't know.

Q. What has he done since the election day?

A. I haven't seen him since the election.

Q. Do you say you live in the same ward with him, and and you are a police officer, and you say to this committee that you do not know what his occupation was then and what it has been since?

A. I know that he was at one time deputy Republican clerk.

Q. You know that has been some years ago?

A. Yes, sir.

Q. Lets bring it later down, what has his occupation been in the last three months?

A. I don't know what it has been; I don't keep a tab on Mr. Gregory; as I said once before, I don't like Mr. Gregory, and I don't follow him up to find out where he is. If he was across the street I would not speak to him.

Q. Your likes or dislikes have nothing to do with your knowledge of the persons on your beat.

A. No, sir; I treat everybody alike.

Q. You say to this committee you don't know what Mr. Gregory's occupation has been since he ceased to be a deputy clerk.

A. I say to you I have not seen Mr. Gregory half a dozen times since he was clerk.

Re-examination by Mr. Kohn.

Q. Did the precinct go Democratic or Republican?

A. The announcement that was made at the polls was two to one in favor of Goebel.

Q. 160 in favor of the Democrats and about eighty for the Republicans?

A. Yes, sir.

Q. You say you went with the officers to make the return; who took the return back?

A. The Democratic clerk, the Republican sheriff, the Republican inspector and the Democratic inspector.

Q. This return was carried in by you with these Republican officers and Democratic officers?

A. Yes, sir.

Q. And yet this book he has introduced says that they were rejected and that there was no return; do you know what became of that return?

A. No, I don't know.

Q. It is claimed that it was not counted because there was no return made, and yet you took this return up with these officers and the return was publicaly announced there?

A. Yes, sir.

Re-cross examination by Col. Breckinridge.

Q. You took the ballot-box, you don't know whether there was any return in it?

A. No, sir; we took the box.

Q. What you meant to say to Mr. Kohn was that you went with the box—the ballot box?

A. Yes, sir.

Q. Is this the precinct in which Mr. Charlton was one of the candidates for the Legislature?

A. Yes, sir; the eleventh and twelfth wards.

Re-examination by Mr. Kohn.

Q. Did you see any of the votes counted in that precinct?

A. I could look through the window and see them from where I was standing.

Q. Do you know whether they kept any tally sheets?

A. They were counting the votes, and only one tally sheet was made.

Q. Who made that?

A. The clerk.

Q. Was he the same man who made the announcement?

A. Yes, sir.

Q. Do you know whether or not he had another sheet which he put in the box?

A. I didn't see the sheet that the announcement was made from; he announced the vote.

Q. How does that precinct generally go?
A. A Democratic precinct, one of the largest in that twelfth ward.

Morris Hook, being duly sworn and examined by Mr. James, deposed as follows:

Q. Where do you reside?
A. I live in Bracken county, sir.
Q. State what, if any, official position you hold in Bracken county?
A. I am Sheriff of the county.
Q. You are Sheriff of Bracken county?
A. Yes, sir.
Q. State to the gentlemen of the Committee whether or not you were familiar with the ballots used in Bracken county at the last election, 1899, for Governor and Lieutenant-Governor?
A. I was.
Q. State to the committee whether or not those were good ballots?
A. I think they were as good ballots as were ever voted in the county.
Q. Could the stencil mark be seen after the ballot had been folded, through the ballot?
A. I could not see the one I voted.
Q. Did you try to see it?
A. Yes, sir.
Q. And it could not be seen?
A. It could not be seen.
Q. Who printed these ballots, Mr. Hook?
A. Mr. James W. Staton.
Q. Is he a public printer—Job Printer?
A. Yes, sir; he is a job printer there in the county.
Q. Does he do your work for you, as Sheriff?
A. Yes, sir; he prints all my books.
Q. What precinct did you vote in, Mr. Hook?
A. In Central Augusta Precinct.

Cross examined by Col. Breckinridge.

Q. Can't you see that printing through there?
A. Yes, sir.
Q. Can't you see it through there?
A. Yes, sir.
Q. See it through there?
A. Yes, sir.
Q. Do you know whether the mark of a stencil, where it has been freshly put upon the pad, will show through paper

like this as easily as the print itself, or do you know anything about that?

A. I said, Colonel, it did not show through my ballot; that is all I said.

Q. Didn't you say further that it was a good ballot; wasn't that your expression?

A. Yes, sir.

Q. You are not a printer?

A. No, sir.

Q. You are not a paper man?

A. No, sir.

Q. You have no experience with paper?

A. No, sir; I am no expert at all.

Q. You know nothing about the chemical composition of inks?

A. No, sir.

Q. You know nothing about the difference, if there is any difference, about the inks used on pads?

A. No, sir.

Q. All that you mean therefore to say, is, the particular ballot you voted you did not see through?

A. Yes, sir.

Q. Did you hold it up at all to see whether you could see through it, or not?

A. I went to the ballot box from my booth, and held the ballot up to see whether I could see through, and I could not see the stencil mark.

Q. Did you examine anybody else's ballot at all?

A. No, sir.

Q. You know Mr. Staton, of Bracken County?

A. Yes, sir; and he is a very high Mason, too.

Q. He is a printer?

A. Yes, sir.

Q. It was printed at his job office?

A. Yes, sir.

Q. But you know at all yourself about the character of the paper, what it was, except that it was this?

A. Yes, sir.

Re-direct examination by Mr. James.

Q. Were there other ballots used in the Central Augusta precinct like the one you voted?

A. Identically the same thing.

Q. And you say when you went from the booth to deliver your ballot to the Judge, that you did hold it to see whether you could see the stencil mark, and you could not do so?

A. Yes, sir; I did.

J. B. Felix, being duly sworn and examined by Mr. James, deposed as follows:

Q. Mr. Felix, where do you live?
A. I reside in Augusta, Bracken County.
Q. What is your profession?
A. Attorney.
Q. Attorney at law there?
A. Yes, sir.
Q. Did you vote in the election held in that county in 1899, for Governor and Lieutenant Governor?
A. I did, sir.
Q. State what sort of a ballot was used there?
A. Plain, white ballot, so thick a stencil mark could not be seen—detect the manner of voting, or the party voted for—could not be detected when the ballot was once folded.
Q. I will ask you if the ballot had been once folded, whether or not the stencil mark could be seen?
A. Not on my ballot.
Q. Were the other ballots like the one that you voted?
A. Identically the same; I saw some of them.
Q. And they were identically the same?
A. Yes, sir.
Q. State to the commission, if you know, the politics of the gentleman that printed these ballots?
A. He belonged to the species of politicians known as Brown Democrats.
Q. A Brown Democrat printed these ballots for Bracken county?
A. Yes, sir; probably the most prominent one in Bracken county.

Cross-examined by Col. Breckinridge.

Q. What is his name?
A. James W. Staton.
Q. Is he the Staton who was the Grand Master of the Grand Lodge of Kentucky?
A. I know nothing of that, sir; at all.
Q. You don't know anything about whether he is the same gentleman who was the chief officer of the Masonic Grand Lodge of Kentucky?
A. No, sir; I know nothing of that at all.
Q. Where does he live?
A. At Brooksville, Bracken county.
Q. Where do you live?
A. Augusta, Ky.; about nine miles from there.
Q. How long have you lived there?
A. I was born and raised there; I am now twenty-three years old.
Q. How long have you been practicing your profession?

A. Two years.

Q. Graduate of what college?

A. Columbia University of Washington, of which Justice Harlan of the Supreme Court is one of the teachers.

Q. Of course, the students are like unto the professors, you think?

A. Well, I could not answer that; that would be an inference, which you have kindly drawn for me.

Q. An inference which we evidently agree upon?

A. I thank you, if that is your judgment.

Q. Now, will you do me the favor to say whether you can see the printing through that?

A. I could not read it.

Q. Can you see it?

A. I can detect that there is something on the other side.

Q. Is that all that you can do?

A. Yes, sir.

Q. You could not detect it was printing?

A. I might, if I examined it very closely.

Q. Could you, from that distance?

A. I think perhaps I could, but I would not swear to it.

Q. I didn't ask you to swear to it.

A. Yes, but I am under oath.

Q. What is your best judgment about it, under oath?

A. Well, it would be simply a guess.

Q. Is there any guess about your saying whether you can see that, or not?

A. I said I could see something on the other side. You asked me whether it was printing. I don't know whether it is or not.

Q. Will you now take it and—

A. Will you permit me to take it?

Q. Certainly, and say whether you can read through it?

A. I am not in the habit of reading backwards, but I would not swear that that was print; it looks though it might be print.

Q. Was it of that texture of paper you voted on?

A. I could not say as to that. I suppose it was, if that is one of the official stub-books.

Q. Did you try to see if you could see through one of those ballots?

A. I held mine up.

Q. Why did you hold yours up?

A. I think it was perfectly natural I should notice and examine my ballot.

Q. Give to the board the reason which you now recollect you then had for examining your ballot to see whether the stencil mark could be seen?

A. I don't know that I examined it for that purpose. I had an idea that some kind of ballots would be used for

fraudulent purposes—thin ballots. I can't say that that was in my mind.

Q. You can't say that that was in your mind?

A. No, sir; I didn't suspicion that in Bracken county, but I am certain it could not be seen through mine, because in folding and preparing the ballot to be returned to the clerk of election to be deposited in the ballot box, I wanted to see that I did not lose my vote through some irregularity.

Q. You do now recollect—

A. That I examined my ballot as every citizen ought to.

Q. You do now recollect that you examined your vote to see that you did not lose your vote because of some irregularity?

A. I did not say that. I wanted to see whether there was anything wrong with it, whether I folded it improperly. I might have laid the ballot down on the stencil or pad, and made a mark on it that I was ignorant of.

Q. That was in your mind at the time?

A. I say, all those circumstances—

Q. And you say, at that time you then thought of those things?

A. I did, naturally; as every citizen should.

Q. You thought that you might have put your ballot on the stencil, and it might have been defaced, and you examined it to see?

A. I say, that might be the case with every voter.

Q. I am not asking you about other voters, I am asking you what was in your mind about your vote?

A. My intention was to preserve my vote, and if I put my ballot on one of those pads that you put ink on for the stencil, and my ballot had gotten a mark on it, I don't think my ballot would have gone, and consequently I wanted to protect my ballot.

Q. You did, at that time, have it in your mind that by a possibility you had put your ballot down accidently, and it might have gotten defaced, and for that purpose you examined it?

A. I had some acquaintance with the laws governing elections, and I knew through some inadvertance, or accident, or negligence, I might possibly lose my vote, and I examined the ballot solely for the purpose of avoiding it.

Q. Could you now recollect that it was for that reason you examined it?

A. I most certainly do, as I said in the first place.

Q. When you examined it, did you hold it up between your eyes and the light?

A. I am quite confident I held the ballot up this way to fold it, and if I could have seen the stencil mark, I am satisfied it would have impressed me because we were looking out—rather I should not make that statement, I was looking

out for any mistake I might make by which I would lose my vote, and I was very careful.

Q. What sort of booth was it?

A. It was a plain white—I think it was a booth with four posts, with poles, and a sort of curtain, white—perhaps linen, or cotton—possibly cotton, around it.

Q. Roof to it?

A. I don't recall as to that.

Q. Any window so that the light fell upon it?

A. No, sir; but it was perfectly light—they were sitting, perhaps, ten feet from the window, a large window, and the voting in my precinct was held in what is known as Russell Hall, the rink, and the light is very good in there, and these booths being very close to that window, there would be nothing in the world to obstruct the vision in there.

Q. Was the booth a closed booth?

A. As I recollect it, it was—yes, sir.

Q. Did you fold it in the booth, or after you came out?

A. In the booth.

Q. Did you examine it in the booth?

A. Yes, sir.

Q. By holding it then between you and the wall, or between you and the curtain?

A. My recollection I held it this way, and folded it.

Q. Between you and the wall, or between you and the curtain?

A. What wall?

Q. Wasn't there a back wall?

A. This booth was just sitting out to one side of this hall, and there was no wall except this linen or cotton, or whatever it was, that surrounded the booth.

Q. The booth was entirely made of cotton?

A. My impression now is, that it was, sir.

Q. Altogether?

A. Yes, sir.

Q. No plank.

A. I won't be positive as to that; I am just giving you my impression.

Q. What is your best impression?

A. My impression is that it was; if there was any board side to it, I don't recollect; there might have been.

Q. There was a desk of some sort, or shelf?

A. Yes, sir; sort of shelf where they had these stencils.

Q. When you folded your ballot, had you turned around?

A. Had I turned around?

Q. Yes, sir; you were standing in front of this shelf?

A. I possibly might have turned around, yes, sir.

Q. What is your best recollection?

A. I was in the act, of course, of going out to deposit my ballot with the clerk.

Q. Had your attention ever been called up to that time to the possibility of tissue ballots?

A. Never had, sir.

Q. When you looked at your ballot, had you in your mind any impression of any sort that stencil marks through the ballot was one of the modes by which ballots might be destroyed?

A. I can't say that I did—no, sir.

Q. You then examined that with no purpose—

A. In Bracken county, Colonel, we are in the habit of having fair elections, and naturally we are not suspicious of fraud.

Q. And at that time there was nothing in your mind to make you look to see whether the stencil could be seen through it, or to see whether there was some accidental mark on it?

A. Yes, sir.

Q. And in that, you didn't see the stencil mark?

A. I did not; I am positive as to that, sir.

Re-direct examination by Mr. James.

Q. He has asked you in regard to the printing upon this ballot?

A. Yes, sir.

Q. I will ask you to state to the committee whether or not you think a heavier impression could be made upon paper by running it through the press, by the type, or by a stencil, like the stencil you put upon it?

A. By type, of course.

Q. (By a committeeman): I will ask you to examine the printing on those stubs?

A. The inside, the side that was not turned to me?

Q. Examine the printing—is it not an extra heavy type?

A. It appears to be; I am not acquainted with the art of printing.

Q. I will ask you whether or not the names of the candidates on the ballots were in as heavy a type as that?

A. My impression is, that they were not.

Q. Did you hear any complaint in Bracken county on the day of the election about thin ballots, or ballots being transparent?

A. None whatever, sir.

Q. Heard nothing in the world about it?

James Kinnarney, being recalled and examined by Mr. Kohn, deposed as follows:

Q. Were you present at the time the case was going to trial of the Commonwealth against Miller, charged with

carrying concealed weapons, for which you arrested him, and about which you testified on your direct examination?

Objected to and sustained.

Q. I will ask you who it was that pardoned him, whether it was Gov. Bradley or Gov. Taylor?

Objected to and sustained.

Charles M. Meecham, being duly sworn and examined by Mr. McQuown, deposed as follows:

Q. Where do you reside?

A. Hopkinsville, Ky.

Q. Did you hold any official position in Christian county in the year 1899?

A. I was on the Election Commission—County Election Commission.

Q. One of the members of the County Board?

A. Yes, sir.

Q. Were you present and did you participate in the counting or canvass of the vote of Christian county for the election—in the election of 1899?

A. Yes, sir.

Q. Something has been said in this case about throwing out the votes which were cast in precinct No. 1 at Hopkinsville, Ky. What about that, Mr. Meecham?

Objected to.

Q. What condition—were the ballots from that precinct presented before your board?

A. A majority of them were, a large number of them were sealed and returned as questionable ballots.

Q. Do you know how many ballots there were of your own knowledge—did you count them?

A. It came out in the examination that there were 238 ballots returned as questionable out of a total of 428-9, I don't remember which.

Q. There were 238. Then were those ballots left with the county clerk?

A. Yes, sir.

Q. In what condition were they left?

A. The seal was never broken. We never accepted the ballots. We never accepted the returns at all, and never opened the returns.

Q. When your board turned them over to the county clerk, in what condition were they, how were they, were they sealed up or not?

A. The poll-book was tied with a string, the stub-book, you understand?

Q. How were the ballots?

A. But the questionable ballots were sealed in two packages, securely sealed with mucilage, papers, and the mucilage seal was never broken, we never opened. We never saw them.

Q. What did your board do with those returns sealed up in that way?

A. We returned them to the county clerk.

Q. Were they presented to your board in that condition?

A. Yes, sir.

Q. And returned by your board to the county clerk in the same condition without having broken the seals?

A. Yes, sir.

Q. Do you know whether these are the same ballots or not?

A. I haven't examined them. I could tell by the signature.

Q. Well, can you tell by any examination of these whether they are the same ballots?

A. That is doubtful, the clerk's signature was not on those ballots, that is what made them defective.

Q. You mean the clerk's certificate was not on the ballot?

A. Yes, sir.

Q. And that was the cause of your having to throw out the precinct?

A. Yes, sir.

Q. One of the causes?

A. One of the reasons, yes, sir.

Q. What was the other cause?

Objected to.

Q. You know who broke open these ballots?

A. No, sir; I do not. We instructed the clerk to nail all of the returns up in a box and keep them intact and subject to our orders if we needed them. We didn't know but what we would have occasion to use them, and he reported that he had put them all in a box together and nailed them down tightly, and would see that they were kept in that condition.

Q. You don't know how they came unsealed yourself?

A. No, sir.

Q. There is nothing about these ballots that you can identify them as the ballots in question?

A. No, sir; I have never seen them at all.

Q. Or whether they are some of those that were used in that precinct if any of them were used there?

A. I have no knowledge on that point. I know the number of ballots reported as returned.

Cross-examined by Judge Yost.

Q. Didn't you see Mr. Krouse break the seal the other night while he was a witness?

A. No, sir; this is the first time I have been here.

Q. You were not here the other night?

A. No, sir.

Cross-examined by Col. Breckinridge.

Q. Is that the stub-book, or did you open the stub-book at all?

A. We opened the stub-book, yes, sir.

Q. Is that the stub-book?

A. This is the stub-book.

Q. That was before your board?

A. Yes, sir; this came in a separate package tied with a string.

Q. This stub-book showed, did it not, that there were counted at that voting place 417 ballots?

A. Yes, sir; this stub-book was examined.

Q. This was properly certified?

A. It was in that condition.

Q. These were the officers of the election?

A. Yes, sir; they were.

Q. Appointed by your board?

A. Yes, sir.

Q. And this certificate showed that at that precinct there had been cast and counted as valid 417 ballots?

A. This book was never received in an official capacity, we never tabulated the vote.

Q. So I understand, you never tabulated the vote, but I am asking you whether before your board this certificate was not produced and examined—you say it was not tabulated?

A. It was produced, it was never acted upon, or rather we acted upon it and decided—there was a protest filed against the counting of the vote finally, and we examined into the points of the protest?

Q. But you did examine that?

A. We looked at it.

Q. I mean, was this a part of the evidence before you?

A. We didn't accept it as an examining board and tabulated as a return.

Q. But this certificate before you showed that there had been cast 417 votes—ballots in that precinct, as valid ballots?

A. Well, not valid ballots because that was the very question that we had to pass upon.

Q. I am not asking you whether they were valid. I asked whether the certificate don't show that the number of ballots counted as valid in that precinct was 417?

A. They were returned as questionable—these other ballots that were counted were returned as questionable ballots.

Q. Under the law, ain't it true, if it is counted as valid and questioned, has to be determined, but if it is counted, it is counted as valid, and the fact that it is questionable don't change the precedent fact that the judges of election counted it, does it?

A. As I understand it, any questionable ballot returned

has to be passed upon by the canvassing board, whether it was counted or not.

Q. But still it is a fact that the ballot either was or was not counted, isn't it, by the election officers?

A. There was no dispute of the fact that these ballots were counted by the—

Q. By the election officers?

A. By the election officers.

Q. Four hundred and seventeen of them?

A. But before they reached our hands—

Q. There was a protest?

A. There was a protest stating that the election—the entire election had been rendered illegal by the—by acts that is set forth in the protest.

Q. The point I want to get at, answer the question, this certificate of those election officers was before that board and returned to them?

A. It was offered to us, but we declined to accept it. It was laying on the table—and we looked at it, but we didn't examine it, and we never did tabulate it as we did with the other returns.

Q. But it was returned by the election officers?

A. Yes, sir; it was returned, and was with the other.

Q. And was exactly as all the other ballot stubs were returned?

A. Except attached to it was this part of the ballots here.

Q. But this stub-book was returned to you precisely as every other stub-book in the county of Christian, was it not, and found by you in the same place as were all the other stub-books?

A. In the same condition, some of them were sealed and some were tied with a string.

Q. Now, you didn't unseal those ballots?

A. No, sir.

Q. And you threw out this whole precinct?

A. We declined to count it, we passed it up, as we considered it, at that time, to a higher court.

Q. So that what you really did was not to reject it, but to pass it to the State Board?

A. It amounted to throwing it out, we didn't count the vote.

Q. And gave certificates as if this had been; there had been no election in this precinct?

A. Yes, sir; we certified to only 27 out of 28 precincts?

Q. In point of fact it is true, is it not, that upon the face of those returns Mr. Taylor got 252 and Mr. Goebel 157?

A. We took no official notice of how many votes they got.

Q. That is a fact.

A. We didn't include that, we did not—

Q. Is it or not?

Mr. Kohn: Do you know the fact?

A. I heard that, but we—

Q. I asked you whether it does not show it on the face of it?

A. Those figures appear here.

Q. And that is the certificate. I will ask you further if it is not true that the throwing out of that precinct changed the political complexion of the municipal council of the city of Hopkinsville?

Objected to.

Q. I will ask you whether it was not true that the throwing out of that precinct changed the political complexion of the council of the city of Hopkinsville?

A. Yes, sir; it changed the result in one ward in which this precinct was, it is part of the ward; it changed the political complexion. There were three of one to be elected—of each to be elected.

Q. How did it change it?

A. Well, the throwing out of this precinct left the Democrat election in the fourth, not the No. 4, but in the fourth ward. There were three on each side. This ward was the first ward that was in doubt, and the counting of this precinct would have elected the fourth man, a Republican. Failing to count it left the fourth man a Democrat.

Q. If it had been counted, it would have made the council of the city of Hopkinsville stand how?

A. It would have stood four Republicans and three Democrats.

Q. And counting it—throwing it out, it made it stand how?

A. It stood three Republicans and four Democrats, but one of the Democrats didn't stay.

Q. That, however, I suppose, that was not contemplated at the time of this action, was it?

A. No, sir; he was seen subsequent to the counting.

Q. That was not within the vision of the gentlemen who threw this precinct out, was it?

A. No, sir; that was unexpected.

Q. That was an unexpected subsequent event?

Re-direct examination by Mr. Kohn.

Q. Was that the reason why you rejected the precinct in order to change the complexion of the council of Hopkinsville?

A. As I stated a moment ago, a formal protest was lodged with us against the counting of the precinct—lodged by this councilman whose race was in jeopardy.

Q. I asked you was that the reason you threw it out, or was it because it ought not to be counted?

A. Of course not; we all examined into the matters raised in the protest.

Q. And decided it ought not to be counted. I ask you to look at this ballot, which is one and the same as the 238 presented, and ask you whether or not that is signed by the election clerk?

Judge Yost: It is conceded that none of them are. It is signed by two of the judges.

Mr. Kohn: And the certificate is only signed by two of the judges?

A. Yes, sir.

Q. And not signed; there is nothing on the ballot itself to identify it in any way, is it?

A. No, sir.

Q. On the back of the ballot. Nothing to show whether it was counted or not counted, no certificate signed by all the officers at all.

A. This certificate is signed by only two of the officers.

Q. That is an attached certificate on a separate piece of paper signed by two of the officers only?

A. Yes, sir.

Q. But there is no certificate on the ballot itself?

A. None that I can detect.

Q. No certificate anywhere signed by all the officers?

A. No, sir.

Judge Yost: It is conceded that the clerk's name is not signed to any of the ballots, that all the certificates are attached, pinned and signed by two of the officers only.

Re-cross examination by Col. Breckinridge.

Q. Did it ever occur to that board that the fact that under the law these ballots could not be taken as evidence, and could not be counted, was no reason for disfranchising the other two hundred and odd voters who had cast proper ballots which had been destroyed?

A. We never got to the point itself on the legality of these ballots.

Q. Therefore you never decided whether these ballots were to be counted or not?

A. No, sir; we decided that the election—the entire election had been invalidated in that precinct by other acts besides this.

Q. Isn't it a fact that under the laws those ballots can not be counted—any reason that you know of why the legal ballots that were cast and were counted should be thrown out, two hundred and odd in number?

A. The same reason existed that existed for our action in not—

Mr. Kohn: State the reasons.

A. We sent for all four officers, and their testimony developed the fact.

Objected to, objection overruled.

Mr. Kohn: Let's have the reasons why this precinct was not counted?

A. There were four or five reasons developed, any one of which we considered sufficient. The main, principal reason was that the ballot box had been opened during the election and the ballots taken out and the election resumed, and the polls had been closed down for an hour at noon pending the argument on what should be done with these ballots that had been discovered to be defective, and an additional reason was that it was shown that the county officers appeared in the poll-room and threatened the election officers with prosecution, stating that they would have the whole outfit put in the penitentiary.

Mr. Kohn: What Court?

A. Federal prosecution, if certain votes were not admitted as they contended they should be.

Mr. Kohn: You found those to be facts, determined those to be the facts, and upon that discarded the precinct?

A. Yes, sir; and there were numerous other irregularities, but those were the principal ones.

Q. (Col. Breckinridge resumes): Did you determine that you had the power to do that as a Board?

A. We heard argument on that two days, and finally decided that we were not only a canvassing but an examining board, and that our attention had been called to these matters, and it was part of our duty to examine into the charges in order that we might pass upon that question intelligently.

Q. You have none of the testimony upon which you acted?

A. There was about sixty typewritten pages of testimony filled with our report and sent in with the other returns, a complete report of this evidence. The matter subsequently came up in the court, and was sustained—our contention was sustained.

Mr. Kohn: Your contention was sustained by the courts?

A. By the Circuit Courts, yes, sir.

Gov. W. O. Bradley, re-called by contestant, being examined by Mr. Kohn deposed as follows:

Q. I will ask you to state whether the clipping I have handed you, purporting to have printed in the Courier-Journal of December 14, 1899, is a correct report of the statement which you made in reference to your action in calling out the militia in the City of Louisville on the day of the election, 1899?

A. I have examined it, gentlemen, and it seems to me that substantially it is. I find one mistake in it that is a very patent mistake; it is nearly however, a typographical error.

It says "The affidavits further stated that affiants verily believe that the military force could not be safely placed under the command, charge or direction of the Mayor, the Sheriff or Jailer of the county or confidence of the police." That is "Chief of Police." I think that is substantially the paper.

Q. I will ask you to file it as a part of your testimony?

A. Certainly. In this paper I did not go into the details, as I did in my testimony.

Said paper is as follows:

"The State Board of Election Commissioners having expressly decided that they possessed no power to go behind the returns, have seen fit to express their serious disapprobation of my conduct in calling out the State Guard. It is a source of profound regret that these gentlemen don't approve my course for nothing is to be so desired as their approval. Not contenting themselves with an expression of disapproval, however, they characterize my conduct as reprehensible, and yet they say that they should not form opinions, and have not the right to form them on ex parte affidavits. Either these gentlemen formed their opinions on ex parte affidavits, or, what is worse, the reports of a partisan press. Agreeing with the board that they could not go behind the returns in certifying the result, no effort was made to present the facts concerning the calling out of the State Guards. But, as they have seen proper to overstep their duties in order to express condemnation, I will not give to the public the facts of the case. In the first place I did not equip the Legion in order that they should be used in the election, as reported. After the three State Guard regiments enlisted in the government, I took steps to reorganize it, knowing that the services of troops might possibly be needed at any moment to protect the public peace. A company was formed in Louisville; but, as they could not obtain an armory, they were finally discharged. Upon the return of the Legion steps were taken to reorganize it into the State service. There were many delays, unnecessary to mention, but finally eight companies were raised and mustered in. This was more than three months before the election. The second regiment was the first to complete its organization under Col. Williams, and as each company was formed it was supplied with equipments. Some seven companies were raised in the third regiment, one a short while after the war with Spain commenced, and these were supplied with equipments as rapidly as they could be obtained, one or two of them being now without equipments because they had not been obtained from the government. For months, more or less, these various companies have been equipped from time to time. No equipment was sent the Legion (or First Kentucky Regiment), because they were unable to obtain an armory.

The week before the election they succeeded in securing an armory, upon notice of which, equipment was sent to them. The statement that I went to Louisville to call out the guard was, and is, maliciously false. Appointments were made for me to speak in three places in the city on Saturday night before the election, and I went there to fill them. After having spoken, a number of the citizens asked me to remain over and speak at the Auditorium on Monday night, which I agreed to do, and the fact was announced.

Meanwhile, before the Monday night, the press of the city showed very great bitterness and excitement. The mayor issued a proclamation, saying bloodshed was apprehended, and extra police were appointed. On Monday some eighty-seven election officers were summarily removed, and this added greatly to the intense excitement already prevailing. The affidavits of John I. Calloway, John C. Miller, E. L. McDonald, Robert Cochran, Allen R. Carter, Charles I. Stewart, Richard W. Knott and John E. Baskin were filed with me, in which it was stated on account of the excited condition of the public mind, and the general opinion that a fair election would not be given, and the general impression that free exercise of the right of franchise would be interrupted by force and fraud, they verily believed that there was great danger, that many breaches of the peace, secure the rights, lives and property of the citizens, it would be necessary to strengthen the civil authorities by the employment of military force, by ordering into service so much of the State Guard as might be necessary to prevent such dangers. In this connection they referred to the proclamation of the mayor. The affidavits further stated that affiants verily believed that the military force could not be safely placed under the command, charge and direction of the mayor, the sheriff or jailor of the county, or confidence of the police, there being no city marshal. On filing of these affidavits an order was issued by Col. Charles C. Mengel to assemble the State Guards in the city of Louisville at the armory by 6 o'clock the next day, and to hold them in readiness to protect the lives and property of the citizens of Louisville. He was authorized to exercise great caution and do nothing that the exigencies of the occasion did not absolutely require. That he should permit the troops to use only their edged or pointed weapons, to repel violence unless attack should be made upon them, endangering life. That if the troops could not be placed between the rioters and the persons or property, which they were intending to attack, and the illegal purpose of the riot be persisted in by means dangerous to the lives or property of others, he might order the troops to disperse the rioters by first using the bayonet and sword, and if they should prove ineffectual, but not otherwise, he might then allow them to discharge their weapons. That

before using any force he should command the rioters in the name of the Commonwealth to disperse. This order was given in writing. Later it was supplemented by an oral order that the troops were to be kept in the armory and not allowed to go upon the street or the polling places, except such as desired to vote, and they were to go in citizens' clothes and without guns, in such numbers as he thought best, only a few at a time. Under these orders soldiers were assembled, and not one of them went to any polling place in the city in uniform. About 5:30 p. m., after the polls were closed, Judge Toney's communication was handed to me, in which I was informed that he had issued an order commanding the election officers to admit the Brown and Republican inspectors to witness and inspect the count, and these orders were being contemptuously ignored and calling my attention to his inability to enforce the orders so that I might take proper action. On receipt of this communication I ordered out the troops to enforce the orders of Judge Toney. But owing to delays and misunderstandings they did not leave the armory until after 7 o'clock. When they did leave nearly every polling place in the city had been deserted, and in no instance did they use any force or intimidate any human being. It is proper to add that after the troops were ordered into the armory I declined to speak at the Auditorium, and the appointment was filled by Mr. Willson. It may also be added that this was not the first time the troops have been ordered into the armory at Louisville and remained there on election day. In the quotation by Mr. Cooley, it is said, "It is consequently of the highest importance that the presence of the military at the polls be not suffered, except in serious emergencies, when disorders exist or are threatened, for the suppression or prevention of which the ordinary peace force is insufficient." It will be observed that no soldiers were present at the polls, and even if they had been, under the authority laid down by Mr. Cooley, such presence would have been legal.

Q. On the night of the election, that is on the night of November 7, 1899, after the close of the election were you at the Galt House in the city of Louisville?

Objected to.

By the Chairmam: It is always a matter within the discretion of the court to permit a witness to be recalled; and if they recall Gov. Bradley upon this point they make him their witness. You may go ahead.

Q. I will ask you if you were not present in the basement of the Galt House on the night of the election, on Tuesday evening, after the election, and received returns for the Republicans?

A. I was not there receiving returns.

Q. Were you watching any returns?

A. I went down there to find out what the result was.

Q. I will ask you if there in the presence of Capt. Gist, of Henry County, Dr. Gray, of Henry County, Mr. C. C. Mengel, Mr. Long, Chairman of the Republican Committee, Mr. Landrum, the returns were not handed to you, and if you did not say: "I wish I had known of this injunction of Judge Toney's an hour and a half or two hours before I did, and if I had I would have my military out much earlier, and would have shown you a much different result."

A. I don't know that I know Capt. Gray or the other gentlemen you mentioned. Capt. Gist, I know; I don't remember of having seen him this time. I do not see very well across the room. I do not remember the other gentlemen. I do not remember of talking to Mengel and Long together.

Q. I did not say, speaking to them, they were simply present and the leading republicans all there. Did you or not make the statement?

A. Will you repeat that statement?

Q. "I wish I had known an hour, or two hours before I did of this Toney injunction, and I would have had the military out before I did, and you would have seen a quite different result from what you have now," or words to that effect?

A. I do not recollet what I said there that night; but I think it is absolutely impossible for me to have made an exclamation of that sort.

Q. How long did you stay there that night?

A. I don't know; I was down and went back a time or two—went back and forth.

Q. How late that night were you there?

A. I don't remember.

Q. Can you give us an idea?

A. I haven't an iden on the subject.

Q. Midnight?

A. I expect probably that late, I am not sure about it.

George W. Gist, called as a witness for contestant in rebuttal, being duly sworn and examined by Mr. Kohn, deposed as follows:

Q. Where do you reside?

A. New Castle.

Q. How long have you lived in Henry County?

A. About thirty years.

Q. What is your business?

A. Farmer.

Q. Were you in Louisville on November 7th last, election day?

A. After the polls closed at New Castle I went to Campbells (?) to take the regular train and that was just about six o'clock; and the cannon ball train was waiting there—they had had a wreck below, and it was waiting to get the wreck out of the way; that train left earlier than the regular train and I went to Louisville on it and got there about seven in the evening.

Q Did you see Gov. Bradley that night.?

A. Yes, sir; in the basement of the Galt House—what is known as Republican headquarters.

Q. What was being done there at the time you saw him.

Objected to.

By the chairman: The members of the board are almost, if not quite, of the opinion that this evidence is competent; but owing to the lateness at which it comes the board will admit it only upon the condition that the contestant will consent that the witness whom the contestee has present, if the contestee sees fit, may be permitted to make any statement that he desires to make on the subject. We are going to confine this testimony to one witness on a side. The board has gone beyond its rule in permitting even this much surrebuttal testimony on a question which they have all agreed is entirely proper.

Q. I will get you to answer the question?

A. I would like to make a little statement before answering. Col. Breckinridge has known me—

Objected to.

A. I had better begin by stating who were there.

Q. State what occurred?

A. I went to the Galt House—

Objected to.

Q I will ask you whether you were at the Galt House on the night of the election, November 7th?

A. Yes, sir.

Q. Did you see Gov. Bradley there?

A. I did.

Q. I will ask you whether you saw the returns coming in and being received by the Republicans; and state who was present?

A. I am not well acquainted with Republican leaders, but Chairman Long was there; Mr. Charlie Mengel was there; I don't know who was there just at the time Gov. Bradley made this statement; Mr. Yerkes was there; Mr. Cureton of my county; Dr. Gray; and my son was with me.

Q. Is Dr. Gray a Republican?

A. Yes, sir.

Q. I will ask you whether or not Gov. Bradley stated that night in your presence that he was sorry he had not known of Judge Toney's injuction an hour and a half or two hours before; and that had he known it he would have ordered

the military out sooner and they would have seen a different result in the returns?

A. That is not exactly as I remember it.

Q. Did he state what I have stated substantially?

A. He stated if he had known—

Objected to.

A. Yes, sir; he stated it. He said an hour and a half not two hours; if he had known Toney had issued that injunction sooner he would have called out his militia in the city of Louisville, and shown a very different result in the city of Louisville.

Cross-examination by Col. Breckinridge.

Q. What time was this?

A. I think about 10 o'clock.

Q. Who did he make the statement to?

A. He just made it publicly, walking up and down there in the room; didn't address himself particularly to anyone.

Q. Did you speak to Gov. Bradley?

A. No, sir; I am not personally acquainted with the gentleman.

Q. To whom did you make this statement, first.

A. Dr. Gray and I discussed the matter after we left the Galt House. I told him I was very much surprised at the governor making such statement; and he said he must certainly be joking.

Q. When did you first notify any of these gentlemen on the other side?

A. I think I told Mr. Phelps a few days ago; I do not remember exactly the day.

Q. Where?

A. At the Capitol Hotel.

Q. Had you been summoned?—

A. I had mentioned it several times down there to different parties—Republicans and Democrats.

Q. When was it you told Mr. Phelps at the Capitol Hotel?

A. One day the first of last week.

Q. Were you here as a witness then?

A. No, sir.

Q. How did you happen to fall into conversation with Mr. Phelps?

A. I had read the governor's testimony, and I thought it would be good testimony to make before the board as a Democrat; I thought it was good testimony.

Q. It was after you read the governor's testimony?

A. Yes, sir.

Q. After you read the governor's testimony when you told these gentlemen?

A. Yes, sir.

Q. When was this.
A. One day just last week.
Q. How many days were you here last week?
A. I don't remember.
Q. What days?
A. I can't recollect.
Q. Will you please try to recollect?
A. On Wednesday, probably.
Q. What time of day was it you told Mr. Phelps this?
A. I don't remember; before the train left in the afternoon.
Q. You thought after you had read the governor's testimony it was your duty as a Democrat to inform the Democratic lawyers of what you know?
A. Yes, sir.
Q. Do you recall that Gov. Bradley testified last Saturday night?
A. There was some corroborating statements.
Q. Didn't you just say that you had done that—having read the testimony of Gov. Bradley you thought it was your duty as a Democrat to say to Mr. Phelps what you have stated here, when in point of fact Gov. Bradley did not testify at all until Saturday night; and the testimony was not published until Sunday morning in the daily papers?
A. I read his testimony and I read the testimony of several others, I don't remember just exactly when.
Q. It was after reading his testimony that you told Mr. Phelps this?
A. I don't know when this was.
Q. How does it happen, Mr. Gist, that you could not recollect the night about the time of the testimony that was given by Gov. Bradley when it was that which caused you to make this statement?
A. Col. Breckinridge, all the leading witnesses of the city of Louisville tended in that same direction. I might be mistaken as to the time of Gov. Bradley's testimony, but the testimony of all these leading Republicans and Brown men from the city of Louisville all tended in the direction of showing that he was there for the purpose of preserving the peace, and I thought he was there for the purpose of interfering in the election.
Q. When were you summoned as a witness?
A. Today.
Q. When was it served on you?
A. I received notice by telegram at half past three o'clock this afternoon.

John R. Kelday, a witness, called by contestee, introduced by contestee, being duly sworn and examined by Judge Yost, deposes as follows:

Q. Where do you live?
A. Louisville, Ky.
Q. Have you any official position at this time?
A. No, sir.
Q. Where are you living now?
A. Staying at the Capitol hotel.
Q. Are you a member of the Legislature?
A. I am, sir.
Q. Where were you on November 7th, the election day, 1899—the night of the election day?
A. I was down in the headquarters of the Galt house.
Q. How long were you there?
A. I guess I was there from about half past six and went home about twelve o'clock.
Q. Was it a public meeting at which every one was allowed to come in?
A. No, sir.
Q. State the facts.
A. To explain, there was a room; they have two rooms in the basement; they had a table at one door and the telegrams were received there, through the outer end of the hall, and nothing but Republicans were allowed in that room; no strangers; they listened at the returns from this table.
Q. Could anybody but Republicans come back in that room?
A. No, sir.
Q. Who was behind the table in the back room?
A. Two or three gentlemen put down the returns, Mr. Lenney, Gov. Bradley, Mr. Long, Mr. Shepard—I could not remember all of them; Col. Landrum was there. If Col. Mengel was there I did not see him in that room.
Q. Did you hear the testimony of this witness who has just testified?
A. Yes, sir.
Q. Was he there?
A. Not in that room.
Q. Was he in where he could hear any talk on the part of Gov. Bradley?
A. No, sir; because Gov. Bradley, in his talk behind there, did not talk loud enough that they could hear it on the outside; if he had any conversation it was done quietly.
Q. And if this man was there—
A. A man five feet away on the outside could not have heard any conversation in the room.
Q. Do you mean that in the outer room he could not possibly have heard anything that Gov. Bradley said?
A. No, sir.

Q. Were you where the governor was?

A. Yes, sir.

Q. State whether he made any such statement?

A. Telegrams were coming in—not exactly excitement, but all aroused and interested in the figures, if I remember correctly. I do remember that Gov. Bradley made no such statement. In fact he said nothing about Judge Toney's orders there.

Q. How long was Gov. Bradley in the room that night?

A. I could not say how much he was there that night.

Q. You say you were there during the whole evening.

A. Yes, sir; while they were tabulating the figures.

Q. How large a room was that?

A. I could not say exactly; about from there over to the end of that far picture.

Q. How many men in there?

A. About thirty or forty.

Q. What was Gov. Bradley doing, sitting down or walking around?

A. Sometimes sitting down and sometimes walking around the room.

Cross examination by Mr. Phelps.

Q. You were engaged, as I understand, in tabulating the returns?

A. No, sir; I did not say that.

Q. What were you doing?

A. Just an onlooker.

Q. Who did the tabulating of the returns?

A. Mr. Louis McCorkle, and different ones; just as they came in they were put down.

Q. Did Gov. Bradley receive any of the returns?

A. They handed them over to him—the telegrams.

Q. Do you know whether he received any?

A. I think he did? they were passed over to him.

Q. Was Dr. Cureton there?

A. I don't remember seeing him.

Q. Was Dr. Gray, from Henry county, there.

A. I don't think he was; no, sir, he could not come in there.

Q. Dr. Gray is a prominent Republican?

A. I know, but we knew who came in there.

Q. Can you tell the gentlemen whom you did let in?

A. I was not the door-keeper, but I guess he knew his business.

Q. Do you know the names of any outside of your room, that is except what were in there—in the other room?

A. I know all the Republicans of prominence.

Q. How many were there?

A. About forty or fifty.

Q. So having fifty people in that little distance—you could not undertake to tell the position of each one, and who they were?

A. No, I said in the beginning that that gentleman was not in there.

Q. I know you said that; you also said that Dr. Gray was not in there?

A. I did.

Q. You state under oath that Gray was not in there?

A. I do.

Q. Were you with Gov. Bradley all the evening?

A. Oh, no.

Q. You were not at his elbow all the time?

A. No, sir.

Q. He was walking about, moving from place to place?

A. I saw him sitting down in the room.

Q. You also said he was moving about?

A. Yes, sir.

Q. He went in and out?

A. Yes, sir; he did.

Q. He went in both rooms?

A. Not that I know of; I only saw him in one.

Q. You don't know whether he was in the other room or not?

A. No, sir; I didn't see him.

Q. Your evidence on that subject is purely negative on that subject?

A. Yes, sir.

Q. You don't pretend to state to these gentlemen of this commission that you heard everything that Gov. Bradley said that evening?

A. Almost everything.

Q. I didn't say almost everything— did you hear every word that he said that evening?

A. I could hear everything that was said.

Q. I ask you if you undertake to say here that in that room with fifty people in it, and the returns coming in, that you heard every word that Gov. Bradley said that evening?

A. As I stated, the room was not so large that you could not hear a man anywhere in it, and the men were not all speaking at one time.

Q. There were a good many people standing up and moving about from one place to another?

A. No, sir; they were not moving about.

Q. Everybody sitting down all the time?

A. No, sir; I didn't say that.

Q. Some moving about?

A. Yes, sir; some of them were.

Q. When returns were received that was satisfactory was there any applause shown?

A. Oh, yes.

Q. And when it came in unsatisfactory was there any disapproval?

A. No, sir.

Q. What did they do—just groan and swallow it without kicking?

A. I don't think they either groaned or swallowed it.

Q. You do not want to be understood as stating to these gentlemen that you heard every word that Gov. Bradley uttered that evening from the time he came in until he left?

A. I do not wish to be understood as saying that I would go up to him when he was talking privately; I did not hear that. If he said it publicly I heard it.

Q. I did not ask you for that. I asked you if you wanted it understood as saying to these gentlemen that you heard everything that Gov. Bradley said?

A. Out loud, yes, sir.

Q. I didn't ask you whether it was out loud; that was not my question. Do you mean to say that you heard all of his conversation that evening?

A. No, I said I didn't hear what he said privately, but did hear what he said publicly.

Q. Did he have private conversations?

A. Yes, sir, I know that he did.

Q. But you heard everything that he said publicly, did you?

A. Yes, sir.

Q. Tell us what it was you heard him say publicly.

A. I don't recollect; I didn't say that I could repeat everything he said. I know he didn't say that.

Q. I now want to get from you—you say you heard what he did say—I now ask you to detail to the gentlemen of the Commission what he did say?

A. I do not want you to think for one minute that I could repeat everything that Gov. Bradley said that evening.

Q. Can you repeat anything that he said?

A. Oh, yes.

Q. Tell it to us.

Objected to. Overruled.

A. As I say, there was a hubbub in the room—people talking about the different—different counties, and what was said depends on what was going on at the time. If the returns came in from Nelson county or Breckinridge county—any of those counties—that is what they would talk about—merely tabulating the returns.

Q. I know all of that. You don't either understand me or I don't understand you. I asked you if you could give us anything that Gov. Bradley said?

A. As I said before, I do not undertake to tell you—could not tell every word that the Governor said.

Q. I did not ask you for every word. I am asking for anything that he said?

A. Now let me know what you want, and I will try to tell you.

Q. I want to know if you heard anything he said, and if so, what?

A. I could not tell you everything.

Q. I don't want everything; I want any one thing.

A. I heard him say he was satisfied with the returns.

Q. What time was that?

A. I don't remember.

Q. Who did he tell that to?

A. He told it out to all.

Q. Is that the only thing you remember of hearing him say?

A. As I stated before I could not undertake to go into an account of everything that he did say. I remember he did not say that.

Miss Mary Dunkerson, being duly sworn and examined by Mr. Phelps, deposed as follows:

Q. You are Miss Mary Dunkerson, I believe?

A. Yes, sir.

Q. Where do you reside?

A. In Louisville.

Q. What is your business or profession?

A. Stenographer.

Q. How long have you been engaged in that business?

A. Fifteen years.

Q. Where were you working on the 7th of November of last year, election day?

A. In Col. Young's office, in Louisville.

Q. In what building is that office?

A. Louisville Trust Co. Building.

Q. Do you know Mr. Clarence Walker, a stenographer in Louisville?

A. Yes, sir; I do.

Q. In what building is his office?

A. He is in the same building, on another floor.

Q. How near is his office to the office where you work?

A. It is on the floor below Col. Young's office.

Q. And in the same building?

A. Yes, sir.

Q. Were you in his office, I mean, Mr. Clarence Walker's office, at any time during the day of November 7th last, election day?

A. Yes, sir; I was in there.

Q. Could you tell us about what time of the day you were there?

A. It was in the forenoon; I could not tell the hour exactly. I went down for some paper for Col. Young.

Q. Who was in the office at the time that you went in there, I mean, Mr. Walker's office?

A. Judge Toney, Mr. R. C. Kinkead, and Mr. Clarence Walker, and his two clerks.

Q. What were they doing at the time you went in, if you know, Miss Dunkerson?

A. Mr. Kinkead seemed to have a paper, I think, he was reading from, and Judge Toney repeated after him what he read, and Mr. Walker took it down on the typewriter. I want to say that I didn't listen, I just simply could not help hearing what was said.

Q. Now, let's see if I have that right. Mr. Walker, the stenographer, was taking down—Mr. Kinkead had a paper which he was reading off of, and Judge Toney was repeating after him what he said?

A. Yes, sir; and Mr. Walker was writing it on the typewriter.

Q. Now, what was said between these gentlemen on that occasion, as near as you can recollect, or so much of it as you can remember?

Objected to and sustained.

Q. I will ask you whether or not on that occasion, which you have just now mentioned, you heard Mr. Kinkead dictating to Walker, and heard Judge Toney say, "Put it all down, Bob, and make it as strong as you like, and I will sign it," or words to that effect?

A. Well, it is substantially that. He said, "Go on and put anything you want in it, make it as strong as you like."

Q. Who said that?

A. Judge Toney.

Q. And who did he say that to?

A. Mr. Kinkead.

Q. Mr. Bob Kinkead—R. C. Kinkead?

A. Yes, sir. I want to say that I dislike very much to give this evidence, and I objected to doing so—refused when Mr. Hendrick came in Col. Young's office and asked me to do so before the Contest Board.

Q. You can make any statement you wish, Miss Dunkerson, about that.

A. Well, I don't know that it is necessary, may be that will come out on cross-examination.

Q. What time of day was this?

A. It was in the forenoon.

Q. To whom did you communicate it?

A. I went back to the office and told Col. Young and the two young men that stay in the office. I didn't think there was anything secret in it; it was all public. I hesitated at the door, and nobody noticed my entrance. I didn't go to listen and didn't want to listen; I could not help but listen.

Q. All the clerks were there?
A. Yes, sir.
Q. No secrecy about it?
A. No, sir.
Q. What else was said?
A. That is all I know about it; I came right out.
Q. What else did Judge Toney say?
A. I didn't hear another word, except what he was dictating about the election. I knew it was a public matter.
Q. What was it about?
A. It was about the election.
Q. State to the board what he said?
A. Who said?
Q. Judge Toney; that made you understand it was about the election?
A. I heard him dictating the order. I knew it was the election—about a public matter.
Q. Tell the board what you heard him dictate.
A. I could not repeat all the order.
Q. Repeat as much as you can.
A. I can not repeat it at all. I simply knew what it was.
Q. Repeat, please, as much of what Judge Toney said as you can, so that the board may judge what it was?
A. I only heard what he told Mr. Kinkead, and I heard him dictate the order to the machine. I knew what it was.
Q. What time of the day was it?
A. It was the forenoon of November 7th.
Q. What time in the forenoon?
A. I could not say; I could not name the hour.

Counsel for Contestee asks for time to introduce all of the witnesses referred to in the testimony to-day, in order to rebut the same—Mr. Arthur Wallace, Dr. Miller, and the man whom it was said raised the fuss there in the polls, and Albert Davis, in order to prove by Mr. Davis, which is true, that these men that were spoken of as Republicans were not Republicans—these officers. Prove that this man did not undertake to break up the polls, but was forcibly put out of the polls. And to prove by Mr. Wallace that the statement made concerning him is absolutely false, and by Dr. Miller that he was present at the time this old man was struck by this prize fighter, and at the time these papers were taken away from him and torn up.

By the Chairman: I will say, Governor, that the board would be glad for both sides to go on until they exhausted all their evidence, but under the ruling of the board, of course, the chair will have to state that it is impossible now to grant more time to either side.

To which ruling the Contestee, by counsel, excepted.

ATTEST:

SAMUEL J. SHACKELFORD, *Clerk.*
By ROBERT L. GREENE, *Deputy Clerk.*

2053

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

604

WILLIAM S. TAYLOR AND JOHN MARSHALL,
PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM, ET AL, DEFENDANTS IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED APRIL 16, 1900.

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Pleas before the Honorable the Kentucky Court of Appeals, at the Capitol, in the City of Frankfort, on the 6th day of April, A. D. 1900; Chief Justice James H. Hazelrigg, and Judges Thos. H. Paynter, A. R. Burnam, J. P. Hobson, B. L. D. Guffy, George DuRelle, and J. D. White, sitting.

WILLIAM S. TAYLOR
AND JOHN MARSHALL . . . . . *Appellants,*

VS.

J. C. W. BECKHAM,
L. H. CARTER, AND
JOHN B. CASTLEMAN . . . . . *Appellees.*

Be it remembered that heretofore, to wit, on the 30th day of March, 1900, the appellants, William S. Taylor and John Marshall, filed in the Clerk's office of the Kentucky Court of Appeals a statement of parties and a transcript of record in words and figures, to wit:

Court of Appeals of Kentucky.

WILLIAM S. TAYLOR,
JOHN MARSHALL, ... *Appellants,*

vs.

J. C. W. BECKHAM,
L. H. CARTER,
J. B. CASTLEMAN, ... *Appellees.*

STATEMENT.

The judgment appealed from herein was rendered on March 24, 1900, and is to be found on pages 33 and 36 of this Record. No Summons or Waiving Order is desired.

STATE OF KENTUCKY,
Jefferson County.

Pleas before the Honorable Emmett Field, Judge of the Jefferson Circuit Court, Common Pleas Division, at a Court held at the Court house in the City of Louisville.

WILLIAM S. TAYLOR
AND JOHN MARSHALL . . . . . *Appellants,*

VS.

J. C. W. BECKHAM
L. H. CARTER, AND
JOHN B. CASTLEMAN . . . . . *Appellees.*

TRANSCRIPT OF RECORD.

Be it remembered that heretofore, to wit, on the 14th day of February, 1900, the plaintiff William S. Taylor filed in the Clerk's office of the Court aforesaid a petition; and thereafter on the 15th day of February 1900 the plaintiff, John Marshall, filed in the Court aforesaid a petition. The petition filed by said Taylor is as follows, to wit:

JEFFERSON CIRCUIT COURT

WILLIAM S. TAYLOR, suing for himself individually
and as Governor of Kentucky . . . . . *Plaintiff,*
VS.
J. C. W. BECKHAM and JOHN B. CASTLEMAN . . *Defendants.*

PETITION IN EQUITY.

Plaintiff, William S. Taylor, says he is the Governor of Kentucky, and he brings this action in his own behalf as an individual and as Governor aforesaid.

He says that on November 7, 1899, he was over thirty years of age, and was then and is now and all of his life has been a citizen and resident of Kentucky and of the United States of America; and was then and is now qualified to hold the office of Governor of said State.

He says that on the said November 7, 1899, he, as the nominee of the Republican party in Kentucky, was a candidate for the office of Governor of said Commonwealth, and on that day his name as such candidate and nominee was on all of the official ballots which were to be used and were used by the qualified voters of the State in voting for some one to fill the said office. Plaintiff further says that on the said day there were several candidates for the said office of Governor; but plaintiff did then receive and had the highest number of votes for said office cast by the qualified voters of the State; and was on said day duly elected Governor of the Commonwealth of Kentucky.

He says that thereafter the State Board of Election Commissioners of the Commonwealth of Kentucky, after the returns as to said election were all in, and on or after the fourth Monday after the said election, met at the office of Secretary of State of the said Commonwealth at Frankfort, Ky., and examined and canvassed the said returns, including the returns of election for the office of Governor, and after such examination and canvass did make out in the said office of the Secretary of State, from the said returns made, duplicate certificates in writing over their signatures of the election of this plaintiff as one having the highest number of votes for the said office of Governor of Kentucky; one of which certificates was retained in the office of the said Secretary of State and the other of which was sent and delivered to this plaintiff.

After having received the said certificate of election plaintiff duly qualified as Governor aforesaid by taking the oath of office before the Hon. James H. Hazelrigg, Chief Justice of the Court of Appeals of Kentucky, all as provided for by law. And thereupon plaintiff began to perform the functions of the aforesaid office, and took posession of the public buildings and apartments provided by the State for the Governor thereof, and of the furniture and books and papers and other archives which are by the laws and customs of the State provided for or committed to the keeping of the Governor thereof, and since the time of his said qualification to the present time plaintiff has continuously been, and is now performing the functions of the office aforesaid, and has continuously been and is now in possession of the aforesaid buildings, apartments, furniture, books, papers, archives, &c, as Governor aforesaid.

Plaintiff further says that from the time of his said qualification down to and including the present time he has been continuously, and is now, recognized as Governor aforesaid by the other State officers of said Commonwealth, to wit, the Secretary of State, the

Auditor of Public Accounts, the Treasurer, the Attorney General and others.

But plaintiff says that the defendant, J. C. W. Beckham, is now, and for some time has been claiming and pretending to be the Governor of Kentucky and to have the right to perform the functions of said office, claiming that on the aforesaid November 7th, 1899, one William Goebel was elected Governor of the said State, and that he, the said Beckham was then elected Lieutenant Governor, and that by reason of the subsequent death of said Goebel, he, the said Beckham has become invested with the powers of Governor of said State. And he is now and for some time has been pretending to exercise the powers and performing the functions of the office of Governor aforesaid. He has been pretending to send messages as such Governor to the General Assembly of Kentucky, and has pretended to appoint the defendant John B. Castleman as Adjutant General of Kentucky, and to vest him with power and control over the millitary of said State, and the said defendant Castleman is now claiming and pretending to be such Adjutant General of the State.

Plaintiff says that by reason of the aforesaid acts of defendants herein great confusion has been produced and is now existing in the State of Kentucky, and plaintiff is being greatly hampered and interfered with in the performance of his duties as Governor of the said State.

Plaintiff will file herewith a copy of the aforesaid certificate of the State Board of Election Commissioners showing his election to the office of Governor aforesaid, and will, if necessary, produce the original duplicate which he has in his possession.

WHEREFORE plaintiff prays for an injunction against the defendant J. C. W. Beckham enjoining and restraining him from performing or attempting to perform or claiming the right to perform any of the functions of the office of Governor of Kentucky and against the said John B. Castleman from performing or attempting to perform or claiming the right to perform any of the functions of the office of Adjutant General of Kentucky. And an injunction against each of the defendants from interfering in any way with the performance by this plaintiff of the duties or functions of the office of Governor aforesaid. He further prays for his costs herein expended, and for any other relief to which he may appear to be entitled.

AUGUSTUS E. WILLSON,
W. O. BRADLEY,
W. H. YOST,
BRECKENRIDGE & SHELBY,
HELM, BRUCE & HELM,
Attorneys for Plaintiff.

The petition filed as aforesaid by plaintiff, John Marshall, is as follows, towit:

JEFFERSON CIRCUIT COURT.

JOHN MARSHALL, suing for himself, and as Lieutenant Governor of Kentucky, ... *Plaintiff,*

vs.

J. C. W. BECKHAM, and L. H. CARTER, ... *Defendants.*

Plaintiff, John Marshall, says he is the Lieutenant Governor of Kentucky, and he brings this action in his own behalf as an individual and as Lieutenant Governor aforesaid.

He says that on November 7, 1899, he was over thirty years of age and was then and is now and all of his life has been a continuous resident of Kentucky and of the United States of America; and was then and is now qualified to hold the office of Lieutenant Governor of said State.

He says that on the said November 7, 1899, he, as nominee of the Republican party in Kentucky, was a candidate for the office of Lieutenant Governor of said Commonwealth; and on that day his name as such candidate and nominee was upon the official ballots which were to be used and were used by the qualified voters of the State in voting for some one to fill the said office. Plaintiff further says that on the said day there were several candidates for the said office of Lieutenant Governor; but plaintiff did then receive, and had, the highest number of votes for said office cast by the qualified voters of the State; and was on the said day duly elected Lieutenant Governor of the Commonwealth of Kentucky.

He says that thereafter the State Board of Election Commissioners of the Commonwealth of Kentucky, after the returns as to said election were all in, and on or after the fourth Monday after the said election, made at the office of the Secretary of State of the said Commonwealth of Kentucky, an examination, and canvassed the said returns including the returns of election for the office of Lieutenant Governor, and after such examination and canvas, did make out in the said office of the Secretary of State from the said returns, duplicate certificates in writing over their signatures of the election of this plaintiff as the one having the highest number of votes for the said office of Lieutenant Governor of Kentucky, one of which certificates was retained in the office of the said Secretary of State, and the other of which was sent and delivered to this plaintiff.

After having received the said certificate of election this plaintiff duly qualified as Lieutenant Governor aforesaid by taking an oath of office before the Hon. James H. Hazelrigg, Chief Justice of the Court of Appeals of Kentucky, all as provided for by law. And thereupon plaintiff began to perform the functions of the aforesaid office; and, upon the meeting thereafter of the General Assembly of Kentucky, he began to preside over the Senate thereof, and was recognized as such presiding officer by all the members of the said Senate and has continued thus to preside over the sessions of the Senate to the present time.

But plaintiff says the defendant J. C. W. Beckham is now, and for some time has been claiming and pretending to be the Lieutenant Governor of Kentucky, and is attempting to act as such, and as such pretended Lieutenant Governor is pretending and attempting to perform the functions of the office of Governor of Kentucky, under the claim that one whom he claims to have been Governor of the State has died during his incumbency.

And plaintiff further says that the defendant, L. H. Carter claims to have been elected Speaker *pro tem.* of the Senate of Kentucky, and is falsely claiming that by reason of the alleged fact that the Governor of the State has died, and the Lieutenant Governor has thereby become vested with the powers of Governor, that he, the said L. H. Carter as such alleged Speaker *pro tem.* has the right to preside over the sessions of the Senate of Kentucky, and he is denying the right of this plaintiff to preside over the sessions of that body, and is threatening to hinder and prevent this plaintiff from presiding over the sessions of the said Senate as plaintiff is required by the Constitution and laws of the State to do; and unless enjoined and restrained herein, he will persist in the said attempt to hinder and prevent plaintiff from presiding over the said Senate.

Plaintiff says that said defendant Beckham is not, and never was Lieutenant Governor of Kentucky, and said defendant Carter is not, and never was, President *pro tempore* of the Senate of Kentucky, but the aforesaid acts and threatened acts of said defendants have produced and are still producing and will continue, unless restrained, to produce great confusion in the State, and doubt in the minds of citizens of the State and of the members of the Senate, as to who is the presiding officer of said Senate, and plaintiff will be greatly hindered and obstructed and hampered in the performance of the duties imposed upon him by the Constitution and laws of said State as the presiding officer of said Senate.

WHEREFORE plaintiff prays for an injunction against the said J. C. W. Beckham, enjoining and restraining him from acting or claiming the right to act, or pretending to act as Lieutenant Governor of Kentucky, and an injunction against the said L. H. Carter restraining and enjoining him from attempting to preside

or claiming the right to preside over the Senate of Kentucky, especially when this plaintiff is present, and an injunction against each of said defendants from interfering with or in any way hindering or obstructing this plaintiff in his performance of his duties as presiding officer of the Senate of Kentucky, or any other duties he may have by law to perform. He further prays judgment for any relief to which he may appear to be entitled, and for his costs herein expended.

AUGUSTUS E. WILLSON,
W. H. YOST,
W. O. BRADLEY,
W. H. SWEENEY,
BRECKENRIDGE & SHELBY,
HELM, BRUCE & HELM,
WALTER P. LINCOLN,
ALBERT S. BRANDEIS,
D. W. FAIRLEIGH,
Attys. for Plaintiff.

At a Court held on the 24th day of February, 1900:

This day came the defendants, by their counsel, and filed their joint answer and counterclaim herein.

ANSWER AND COUNTER-CLAIM OF J. C. W. BECKHAM, JOHN B. CASTLEMAN AND L. H. CARTER.

1. The defendants, J. C. W. Beckham, John B. Castleman and L. H. Carter, for their joint and separate answer to the above-styled causes, deny that the plaintiff, William S. Taylor, was, on the 14th day of February, 1900, or is now, Governor of Kentucky, or that on the 15th day of February, 1900, the plaintiff, John Marshall, was, or is now, Lieutenant-Governor of Kentucky; they deny that at the election held on the 7th day of November, 1899, the plaintiff, Taylor, received the highest number of votes cast by the qualified voters of the State for the office of Governor or was duly elected Governor of the Commonwealth; they deny that at said election the plaintiff, Marshall, received the highest number of votes cast by the qualified voters of the State for the office of Lieutenant-Governor, or was duly elected such Lieutenant-Governor of the Commonwealth at said election.

The defendants deny that the defendant, Beckham, has been pretending to exercise the powers or performing the functions of the office of Governor of Kentucky, or pretending to send

messages, or has pretended to appoint the defendant, John B. Castleman, as Adjutant General of Kentucky, or that said Castleman is now pretending to be such Adjutant-General.

But the defendants aver that the defendant, Beckham, not only claims to be but is the legally elected and qualified Governor of Kentucky, and as such has been and is yet performing the functions and exercising the powers of such Governor and as such chief executive officer of the State he has sent messages to the General Assembly and has also appointed the defendant, John B. Castleman, Adjutant-General of the State, and that under such appointment the said Castleman has been and is yet lawfully acting as such Adjutant-General.

The defendants deny that by reason of any acts of theirs that great or any confusion has been produced or is now existing in the State of Kentucky, or that the plaintiff, Taylor, has been hampered or interfered with in the performance of his duties of Governor aforesaid.

Defendants deny that the plaintiff, Marshall, has been recognized as Lieutenant-Governor by the Senate of Kentucky or by a majority of its members, or has ever presided over the said Senate at any time since January 29, 1900, or that he has continued to preside over the said Senate up to the 15th of February, 1900.

These defendants admit that the defendant, Beckham, has claimed, and is yet claiming, to be Lieutenant-Governor of Kentucky, and, as such, since the death of William Goebel, on February 3, 1900, has acted as Governor and has performed, and is yet performing all the duties and exercising the functions of the office of Governor aforesaid, but defendants deny that he has been pretending to be Lieutenant-Governor or attempting to act as such, or pretending or attempting to perform the functions of said office.

These defendants deny that the defendant, L. H. Carter, is now, or was at the time of the filing of this suit, falsely claiming that the Governor of the State had died and thereby that defendant, Beckham, had become vested with the powers of Governor, and that said Carter, as Speaker *pro tem* of the Senate of Kentucky, had the right to preside over the sessions of the said body. These defendants deny that the plaintiff, Marshall, is required by the Constitution or laws of Kentucky to preside over the Senate or has any right to do so. They deny that the defendant, Beckham, is not and never was Lieutenant-Governor of Kentucky; they deny that defendant, Carter, is not and never was President *pro tempore* of the Senate of Kentucky; they deny that any of the acts or the alleged or threatened acts of the defendants hereto have produced, or were producing when this suit was filed, or will continue to produce great or any confusion in the State, or doubt in the minds of the citizens of the State, or of the members of the Senate, as to who is the presiding officer of said Senate, or

that the plaintiff, Marshall, will be hampered in the performance of any alleged duties as alleged presiding officer of the Senate or otherwise at all.

Defendants deny that the plaintiff, Taylor, from the time of his qualification to the 14th day of February, 1900, when his petition was filed herein, or to the present time, has continuously been, or is now performing the functions of the office of Governor; they deny that he, as Governor aforesaid, has had and now has in his possession the buildings, apartments, furniture, books, papers, archives, &c., pertaining to said office; but aver the fact to be that the said Taylor has only been in the possession of the said buildings, apartments, furniture, books, papers, archives, &c., and has only performed or attempted to perform any of the functions of the office of Governor of this Commonwealth since January 31, 1900, as a usurper of said office, and all his actions since said time, pertaining to said office, and the possession of the buildings, apartments, books, papers and archives thereof, have been and are illegal and unlawful.

It may be true that the persons who assumed on the 14th of February, 1900, to fill the offices of Secretary of State, Auditor, Treasurer and Attorney-General, have recognized the plaintiff, Taylor, as Governor, but defendants aver that the offices of the said persons referred to are now the subject of contests before the State Board of Election Commissioners sitting at Frankfort.

2. These defendants, J. C. W. Beckham, John B. Castleman and L. H. Carter, for their further answer and counter-claim herein aver that at the election held on the 7th day of November, 1899, in this Commonwealth, William Goebel was the Democratic candidate for the office of Governor, and the defendant J. C. W. Beckham, was the Democratic candidate for the office of Lieutenant-Governor, and in like manner the plaintiffs, William S. Taylor and John Marshall, were the Republican candidates for the office of Governor and Lieutenant-Governor, respectively, and the said Goebel, Taylor, Marshall and the defendant, Beckham, were voted for at said general election in November, 1899, for said offices; that thereafter on the day of December, 1899, the State Board of Election Commissioners, whose duty it was to examine and canvass the returns from said election, assembled in the City of Frankfort, as required by law, and canvassed the said returns from said election and determined, upon the face of said returns, that the plaintiff, William S. Taylor, was elected November 7, 1899, Governor of the Commonwealth of Kentucky, and John Marshall Lieutenant-Governor for the term commencing December 12, 1899, and accordingly awarded to said Taylor and Marshall certificates showing said facts; and the said plaintiff, William S. Taylor, was thereupon sworn and inducted into the office of Governor of the Commonwealth on the 12th day of December, 1899, and John Marshall was also sworn and inducted into the office of Lieutenant-Governor upon said day.

Defendants aver that the said William Goebel and the defendant, Beckham, were at the time said election was held more than thirty years af age, respectively, were then and had been all their lives citizens of the United States and of the State of Kentucky, and defendant, Beckham, is yet such citizen, and and that within thirty days after the said final action of said State Board of Election Commissioners in awarding certificates of election as aforesaid, the said William Goebel, who had been a candidate for the office of Governor and had been voted for at said election, gave notice to the plaintiff, William S. Taylor, in writing, signed by the said Goebel, that he would contest the election of the said Taylor to the office of Governor, upon numerous grounds which were therein set out at length, and claim and demand that he was duly elected Governor, and in like manner and within the same time from the final action of said Board of Election Commissioners the defendant, Beckham, gave to John Marshall a like notice signed by himself, that he would contest the election of the said Marshall to the office of Lieutenant-Governor of the Commonwealth, and claim and demand that he was duly elected at said election, to said office: that thereafter, on the third day after the organization of the General Assembly of this Commonwealth, the said William Goebel, as contestant for the office of Governor, and the defendant, Beckham, as contestant for the office of Lieutenant-Governor, caused to be filed with both Houses of the General Assembly of the Commonwealth, copies of the said notices of contest, duly executed, which had been given to the said William S. Taylor and John Marshall, respectively, and said notices were then and there entered at large upon the journals of each House, and thereafter on said day the Seneate of Kentucky proceeded, by lot, to select, and did duly select, by lot, three of its members to act as members of a Board of Contest for the trial of the contest for the office of Governor of this Commonwealth, inaugurated as aforesaid, and in like manner proceeded to select, and did select, by lot, three of its members to act upon a Board of Contest for the trial of the contest for the office of Lieutenant-Governor of this Commonwealth; and upon said said day the House of Representatives of said General Assembly did, in like manner, select, by lot, eight of its members to act upon the Board of Contest for the trial of the contest for the office of Governor of this Commonwealth, and, in like manner, eight of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant-Governor of this Commonwealth; that upon said day the said members of the Contest Boards for the trial of the contests for the offices of Governor and Lieutenant-Governor of this Commonwealth were duly sworn as separate Boards by the Speaker of the House of Representatives to try separately the contested elections aforesaid, and, in each case, to give true judgment thereon according to the evidence, unless dissolved before rendering judgment; that thereafter each of the said

Boards, within twenty-four hours after its selection, met, appointed its chairman and assigned a day for the hearing of the contest before it then pending, and upon the day and at the time so fixed by each of said Boards the contestants and contestees appeared, and contestees, William S. Taylor and John Marshall, before the respective Boards for the trial of their contests, each filed defense and counter-notices, and the evidence of said contestants and contestees was heard by said Boards from January 15, 1900, to January 29, 1900, inclusive, and on January 30, 1900, the said contests were submitted, without argument, for judgment, by consent, to said Boards, separately, and the said Boards having duly considered the matters of law and facts involved in said contests did each separately decide the contest submitted to it, and made out, in writing, the decision of each Board, and on the day of January, 1900, each of said Boards reported its decisions, to each House of the General Assembly, for its action thereon; that in the said contest for Governor the said Board of Contest determined, adjudged and decided, and so reported to each House of the General Assembly, that the said William Goebel, contestant for the office of Governor, as aforesaid, was duly elected Governor of this Commonwealth for the term beginning December 12, 1899, at the general election held on the 7th day of November, 1899, and that he had received the highest number of legal votes cast at said election and was entitled to said office of Governor of this Commonwealth; that in like manner the said Board of Contest for the office of Lieutenant-Governor did decide, adjudge and determine, and so reported to each House of the General Assembly, that the defendant, J. C. W. Beckham, contestant for the office of Lieutenant-Governor, as aforesaid, was duly elected Lieutenant-Governor of the Commonwealth for the term begining December 12, 1899, at the election held on the 7th day of November, 1899, and that he had received the highest number of legal votes cast thereat, and that he was entitled to said office of Lieutenant-Governor for said term. Said decision or report, made in the matter of the contest for Governor, was reduced to writing and signed by ten of the members of said Board of Contest, who concurred in the finding. Said decision, in the matter of the contest for the office of Lieutenant-Governor, was, in like manner, reduced to writing, and signed by nine of the members of said Board of Contest, who concurred in the finding.

Said decisions and reports of the said Boards of Contest, in the matter of the contest for Governor and Lieutenant-Governor, as aforesaid, were thereafter adopted and approved, separately, by both Houses of the General Assembly, regularly and duly convened in joint assembly, at which there were present nineteen members of the Senate, which was a majority of the members of the Senate, and fifty-six members of the House of Representatives, which was a majority of the members of the

House, in all seventy-five members, and all of said members of said Houses present, as aforesaid, voted to adopt and approve, and said Houses did then and there adopt and approve said reports of said Contest Boards separately, and then and there resolved, determined and adjudged that the same be approved, ratified and confirmed, and further by resolution then and there adopted, adjudged and determined that the said William Goebel was duly and legally elected Governor of the Commonwealth of Kentucky at the geneneral election on the 7th day of November, 1899, and that he had then and there received the highest number of legal votes cast at said election and was entitled to the office of Governor of this Commonwealth for the term beginning the 12th day of December, 1899; that in like manner the said Houses of the General Assembly of the Commonwealth of Kentucky decided, adjudged and determined that the defendant, J. C. W. Beckham, was duly and legally elected Lieutenant-Governor of the Commonwealth, and, as such, entitled to the office for the term beginning on the 12th day of December, 1899, and that he had received at said election the highest number of legal votes cast thereat; all of which determinatoin, judgment and decision of both Houses of the General Assembly in joint assembly was entered upon the journals of each House thereof; that thereafter in like manner the Senate and the House of Representatives duly and legally convened, each acting separately, duly considered and approved the said reports and findings of the said Boards of Contest made to each House, as aforesaid, in the matter of the contest for the offices of Governor and Lieutenant-Governor, and each of said Houses of the General Assembly, the Senate by a vote of nineteen senators, which was a majority of the members of the Senate, and the House by a vote of fifty-six members, which was a majority of the members of the House, adjudged and determined, as the joint assembly had done, that William Goebel was duly and legally elected at the general election held on November 7, 1899, and entitled to the office of Governor for the term beginning December 12, 1899, and had received the highest number of legal votes cast at said election, and that each house of the General Assembly did also, in like manner, separately adjudge, determine and decide that the defendant, J. C. W. Beckham, was duly elected to the office of Lieutenant-Governor at said general election held on November 7, 1899, and was entitled to said office for the term beginning December 12, 1899, and had received the highest number of legal votes cast at said election on November 7, 1899, which determination and decision of each of the Houses of the General Assembly was entered at large upon the journals thereof, and defendants now plead and rely upon the said decisions, and determinations, made as aforesaid by the General Assembly and each House thereof, as conclusive of the right and title of William Goebel to the office of Governor and the defendant Beckham to the office of Lieutenant-Governor.

The defendants now refer to and make a part hereof the journals of the House of Representatives and the Senate, the proceedings of the joint session of the General Assembly of the Commonwealth evidencing the facts concerning the determination of the said contests aforesaid, and now file attested copies thereof as part of this answer and counter-claim.

Defendants further state that upon the adjudication and determination aforesaid by both Houses of the General Assembly that William Goebel was duly elected to and entitled to the office of Governer, all the powers and authority of the plaintiff, William S. Taylor, who had theretofore been acting as Governor of this Commonwealth, immediately ceased, and, in like manner, upon the adjudication by both Houses of the General Assembly that this defendant had been elected and was entitled to the office of Lieutenant-Governor, all the powers and authority of the plaintiff, John Marshall, who had been acting as Lieutenant-Governor of this Commonwealth, immediately ceased; that immediately upon such adjudication the oath of office prescribed by the Constitution and laws of Kentucky to be taken by the Governor of this Commonwealth before he shall enter upon the discharge of his duties was administered to and taken by the said William Goebel on the day of February, 1900, and he then and there assumed the said office of Governor and entered upon the discharge of the duties thereof, and very soon thereafter, to wit, on the 3d day of February, 1900, the said William Goebel died, and immediately, by operation of law, the defendant, J. C. W. Beckham, became entitled to be inducted into the office of Governor of this Commonwealth and to discharge the duties thereof, he having theretofore, to wit, on the day of February, 1900, taken the oath prescribed by the Constitution and laws of Kentucky, and having been inducted into the office of Lieutenant-Governor before the death of the said William Goebel; that after the death of the said William Goebel, on the 3d day of February, 1900, the defendant, J. C. W. Beckham, being entitled to and required by the Constitution and laws of this Commonwealth to discharge the duties of the office of Governor of this Commonwealth, was immediately sworn, as required by the Constitution and laws of the State, and thereupon at once entered upon the discharge of the duties of said office of Governor of the Commonwealth, and ever since said time has been, and is yet, discharging the duties of said office of Governor aforesaid.

Defendants further states that the plaintiff, William S. Taylor, the contestee and acting Governor, upon the 30th day of January, 1900, unlawfully took possession of the Capitol and public buildings of the seat of government in the City of Frankfort, with an armed body of lawless men, and refused to allow the members of the General Assembly, or either House thereof, to meet, separately, or in joint session, in their respective chambers, in the

Capitol of the Commonwealth, for the purpose of transacting the legislative business of the Commonwealth, and receiving and passing upon the reports of the Contest Boards, in the matter of the contests for the offices of Governor and Lieutenant Governor, which were ready to be made to the General Assembly upon said day. The General Assembly went to the Capitol upon said day and then and there demanded entrance to the chambers, in which its sessions have always been held, but it was met by an armed force of soldiers and lawless men, acting unlawfully under the orders of plaintiff, William S. Taylor, and denied admittance to the Senate Chamber, or the Hall of the House of Representatives, and when the said General Assembly adjourned to and undertook to assemble at two other public places, in the City of Frankfort, he pursued them with a large body of armed men and forcibly, and unlawfully prevented them from assembling upon said day, in the City of Frankfort, at either of said public places, and thereafter, from that time to the present, has unlawfully retained possession and control of the Capitol buildings, in the City of Frankfort, and excluded therefrom the Court of Appeals of Kentucky, and the General Assembly; that upon January 31, 1900, he unlawfully, wrongfully and corruptly assumed and pretended to adjourn the General Assembly from the City of Frankfort to the Town of London, in Laurel County, and attempted to convene the General Assembly, at said place, for the corrupt and unlawful purpose of preventing said General Assembly from considering and acting upon the reports of said Contest Boards, all of which acts were done without the consent and against the wishes of said General Assembly, and while they were in regular session, as provided by law, at the seat of government; but notwithstanding these unlawful acts of the plaintiff, William S. Taylor, the defendants aver that both Houses of the General Assembly did meet in regular joint session and each House met separately, as heretofore alleged, in the City of Frankfort, and did receive, adopt and approve the said reports in the matter of the contests for the said offices of Governor and Lieutenant Governor, as heretofore alleged, but the defendants state that the plaintiff, William S. Taylor, notwithstanding the premises, still continued to prevent, by force and arms, the General Assembly from meeting in their respective chambers, in the Capitol, and still continued to keep and maintain a large body of lawless and desperate men in control of said building, and thereby put the lives of the members of the General Assembly in peril, and thereupon the General Assembly adjourned on the day of February, 1900, to the City of Louisville, where its sessions were regularly held, according to law, until the 17th day of February, 1900, when it adjourned to the seat of government and was permitted by the plaintiff, Taylor, to enter its chambers and resume its lawful sessions therein.

The defendants aver that on the 19th day of February, 1900, the first day that the said General Assembly was allowed to convene in the Capitol, at the seat of government, the Senate of Kentucky, lawfully and duly assembled, in regular session, adopted the following resolution, viz:

"Whereas, on the 31st day of January, 1900, the acting "Governor of the Commonwealth of Kentucky, by the use of "armed force, dispersed the General Assembly, and has until "recently prevented the Senate and House from assembling at "their regular rooms and places of meeting; and,

"Whereas, the General Assembly, and each House thereof, "after public notice, met in joint and separate sessions in the "City of Frankfort, a full quorum of such bodies being present, "and adopted the majority reports and resolutions of the "Boards of Contest for Governor and Lieutenant-Governor of "the Commonwealth of Kentucky, unseating the contestees, W. "S. Taylor and John Marshall, as Governor and Lieutenant-"Governor, and seating the contestants, William Goebel and J. "C. W. Beckham, as Governor and Lieutenant-Governor, respec-"tively, all of which proceedings, report and resolutions are set "out in the journals of the two Houses of the General Assem-"bly; and,

"Whereas, this joint assembly is now enabled to meet in the "regular place of meeting, and, whilst it adheres to the belief, "beyond doubt, that the action of the General Assembly here-"tofore taken in reference to said contests is valid, final and "conclusive, to remove any doubt that may exist in the minds "of any of the people of the Commonwealth; now be it

"Resolved, by the General Assembly of the Commonwealth "of Kentucky, in joint session assembled, to the end that all "doubt may be removed, if any exists, as to the validity and "regularity of the action and proceedings at the times and "places shown by the journals of the two Houses other than its "regular rooms provided by law, that all the acts, proceedings "and resolutions of the Senate and House and of the joint "assembly of the two Houses upon or touching the report of the "majority of the Board of Contest for the offices of Governor "and Lieutenant-Governor, unseating the contestees and seating "William Goebel and J. C. W. Beckham and declaring them to "have been elected Governor and Lieutenant-Governor, respec-"tively, on the 7th day of November, 1899, is hereby re-enacted, "re-adopted, re-affirmed and ratified at this, the regular place of "meeting provided by law, at the seat of government in Frank-"fort, Ky."

The defendants further aver that the House of Representatives, lawfully and duly assembled in regular session, on the 20th

day of February, 1900, adopted the said resolution, and thereafter upon said day the General Assembly of Kentucky regularly convened in joint session, as required by law, also adopted said resolution; that by the adoption of the said resolution the action of the General Assembly, in joint session, and in each House thereof, in theretofore adjudging and determining that the said William Goebel was lawfully elected and entitled to the office of Governor of this Commonwealth for the term commencing December 12, 1899, and that the defendant was lawfully elected and entitled to the office of Lieutenant-Governor of this Commonwealth, for said term, was thereby ratified and re-affirmed. Copies of the journals of the Houses of the General Assembly showing said proceedings will be filed as part hereof and these defendants now plead and rely upon the said ratification of the previous action of the General Assembly as bar to of the plaintiff's claim and alleged right to said offices.

The defendants aver that by the determination and adjudication which was made by the General Assembly, as aforesaid, the powers of the said Taylor as Governor, immediately ceased, but that, notwithstanding the premises, the said Taylor is still unlawfully and wrongfully, in possession of the records, archives and papers pertaining to the office of Governor of the Commonwealth of Kentucky, and, is, in like manner, in possession of the buildings, in which the said executive offices are situated, and now unlawfully and wrongfully, with a large force of lawless men, holds possession of the same, and is usurping the office of Governor of the Commonwealth, pretending to act as such Governor, and to discharge the duties thereof. Defendants state that by reason of the decisions of the said Boards of Contest in the matter of the offices of Governor and Lieutenant Governor, the said William Goebel became and was Governor, and the defendant, J. C. W. Beckham, Lieutenant-Governor of this Commonwealth, and upon the death of the said Goebel, the defendant became entitled to, and it was his duty to, exercise all the power and authority appertaing to the office of Governor, and, in pursuance to the mandate of the law he was duly inducted into said office and is now entitled to the possession of the records, archives, journals and papers and the possession of the executive offices in the said Capitol in the City of Frankfort, all of which are now unlawfully withheld from him by the said William S. Taylor by force and arms, and which he has refused, on demand, to surrender to the defendant. Defendants further state that the plaintiff, William S. Taylor, has usurped, as aforesaid, the office of Governor, and is disposing of the revenues of the Commonwealth, unlawfully and wrongfully drawing warrants upon the treasury, unlawfully maintaining an armed body of men in and about the Capitol building in the city of Frankfort, unlawfully and wrongfully appropriating the moneys and revenues of

the Commonwealth to the payment of said lawless band of men, pretending to act as Governor, and issuing pardons, and attempting to do many other things, as Governor of the Commonwealth, and thereby creating great confusion, distrust aud uncertainty in the affairs of the State; and the plaintiff, John Marshall, is wrongfully claiming the right to preside over the Senate as Lieutenant-Governor of Kentucky, and thus prevents the proper legislation of the General Assembly of the Commonwealth and the proper legal discharge of its duties, and embarrasses and impedes the defendant, Beckham, in discharging his duties as Governor; that the plaintiff, Taylor, has caused the laws of this State to be defied and set at naught; he has caused a citizen to be arrested, without legal process or lawful authority, and refused to obey a writ of *habeas corpus*, duly and legally issued by a court of competent jurisdiction, and is by his conduct bringing the State and all the departments of government into disrepute, and casting a cloud upon all the acts of government done and to be done in carrying on the affairs of State, and has threathened to and will continue to usurp the said office of Governor, wrongfully dispose of and appropriate the moneys and revenues of the Commonwealth, and do other acts of usurpation as Governor of the Commonwealth, unless prevented by an order of injunction; that if he is allowed thus unlawfully and wrongfully to continue in his usurpation, great and irreparable injury will result to the defendants and to all the tax-payers and good citizens of the Commonwealth. They state that no injunction has ever been applied for, granted or refused by any judge or court in this Commonwealth in the matter herein complained of.

The defendants for further answer and counter-claim herein aver that on the day of February, 1900, after the death of William Goebel, and after the defendant, Beckham had been duly sworn and assumed the office of Governor of the Commonwealth and entered upon the discharge of the duties thereof, the defendant, L. H. Carter, who was and is yet a member of the Senate of Kentucky, duly elected and qualified as such, was by the said Senate, in regular session lawfully held, duly elected President *pro tempore* of the said Senate, and he thereupon entered upon the discharge of the duties of his said office, and has ever since his said election presided over the Senate of Kentucky, and doth yet so preside at its daily sessions, as it is his duty and lawful right to do.

The defendants further aver that after the death of the said William Goebel, Governor of this Commonwealth as aforesaid, the said J. C. W. Beckham at once assumed and entered upon the discharge of his duties as Governor, in the room and stead of the said Goebel, as he had the lawful right to do, and in pursuance of the powers vested in him by the law he did, on the day of February 1900, appoint the defendant, John B. Castleman,

Adjutant-General of the Commonwealth, and he thereupon entered upon the discharge of the duties of his office as such officer, and has been so acting ever since said time, as he had the lawful right to do.

WHEREFORE, the defendants pray that the plaintiff, William S. Taylor, be adjudged to have usurped the office of Governor of this Commonwealth, and that he be deprived thereof by the judgment of this Court; that the defendant, J. C. W. Beckham, be adjudged entitled to the said office and be placed in full possession of said office of Governor, the executive offices provided by the Commonwealth for the use of the Governor, and that all the records, archives, books, papers, journals and all other things pertaining to the said office be surrendered and delivered to the defendant, Beckham, by the said Taylor, and that the said Taylor be enjoined and restrained from further exercising or attempting to exercise the office of Governor of this Commonwealth; that the said John Matshall be adjudged to have usurped the office of Lieutenant-Governor of the Commonwealth and that he be deprived thereof and declared not entitled to the same by the judgment of this Court, and enjoined from assuming to act as such Lieutenant-Governor; that the defendant, Beckham, be adjudged the lawful incumbent of said office; and finally the defendants pray for their costs in this behalf expended and for all proper relief.

W. S. PRYOR,
KOHN & BAIRD,
ZACK PHELPS,
LEWIS MCQUOWN,
JAS. A. SCOTT,
J. K. HENDRICKS,
Attorneys for Defendants.

At a court held on February 27th, 1900, came plaintiffs and filed their reply herein, which is as follows, towit:

REPLY AND ANSWER TO COUNTER-CLAIM.

Plaintiffs William S. Taylor and John Marshall for reply to the answer and for answer to the counter-claim herein of J. C. W. Beckham, John B. Castleman and L. H. Carter deny that defendant Beckham is or ever was the legally elected or qualified Governor of Kentucky, or that as such he has been or is performming the functions or exercising the powers of such Governor, or that as such chief executive he has sent messages to the General Assembly or appointed the defendant John B. Castleman Adjutant General of the State, or that under such appointment said

Castleman has been or is lawfully acting as such Adjutant General; though plaintiffs admit that said parties have assumed to act in the capacities just mentioned, as stated in the petition herein.

They deny that plaintiff Taylor has since January 31st, 1900, or at any time been a usurper of the office of Governor, or that any of his acts since that time have been illegal or unlawful.

Par. 2. Further pleading herein and especially in response to the second paragraph of the answer and counter-claim herein plaintiffs say:

They deny that on the day named in the pleading or at all the Senate of Kentucky did by lot or at all select three of its members to act as members of the Board of Contest for the trial of the contest of the office of Governor of this Commonwealth; or did, by lot or at all select three of its members to act upon the Board of Contest for the trial of the contest for the office of Governor of this Commonwealth; or that the House of Representatives of said General Assembly did by lot or at all select eight of its members to act upon the Board of Contest of the trial of the contest for the office of Governor, or did, by lot or at all select eight of its members to act upon the Board of Contest for the trial of the contest for the office of Lieutenant Governor.

They admit that the said Senate and House of Representatives did upon the day named in the pleading pretend to select by lot members of the said respective bodies to act upon the said respective Boards of Contest. But plaintiffs say that the pretended selection was not in fact by lot, but was conducted by means of a fraudulent arrangement, the exact nature of which these plaintiffs are not able to state, by means of which it was known in advance of the pretended selection to the contestants William Goebel and J. C. W. Beckham and their friends and managers, who would be the persons selected as members of said Boards, or at least, it was known to said parties, in advance of said apparent selection, what would be the political beliefs of the persons to be thus selected, and what their feelings and inclinations and desires upon the subject of the contest to be tried by them, and that they would be the partisan friends of said contestants. And said pretended selections by the House and by the Senate were fraudulent and utterly void, as were all of the subsequent proceedings of said pretended Boards of Contest and each of them.

Plaintiffs deny that on January 30th, 1900, or at any time, they or either of them consented to submit said contests to said Boards for judgment without argument. The truth as to said subject will be stated in a subsequent paragraph hereof.

They deny that said Boards or either of them duly or at all considered either the matters of law or the facts involved in said contests, or that they did separately or at all decide the contests submitted to them; although they admit that the said Boards did go through the form, and make a pretense of deciding the said

contests, and did make out in writing their pretended decisions, which however were fraudulent and utterly void.

They deny that on the day of January 1900 or at any time each of said Boards or either of them reported its decision to each or either House of the General Assembly.

They admit that in the contest for Governor the Board of Contest pretended to determine, adjudge and decide that the contestant for the office of Governor was duly elected Governor for the term beginning December 12th 1899, and that he had received the highest number of legal votes cast at said election, and was entitled to said office; and that in like manner the Board of Contest for the office of Lieutenant Governor did pretend to decide, adjudge and determine that the defendant J. C. W. Beckham contestant for the office of Lieutenant Governor was duly elected to that office and had received the highest number of legal votes, and was entitled to said office; but they say that said pretended decisions were fraudulent and utterly void.

They deny that the said decisions or reports or either of them were thereafter adopted or approved by both houses of the General Assembly in Joint assembly. They deny that at the time of said pretended adoption of said reports nineteen members of the Senate constituted a majority of the members of the Senate. They have no knowledge or information sufficient to form a belief as to whether or not all the members of said houses who may have been present at any secret meeting of said members voted to adopt or approve the aforesaid alleged reports of said Contest Boards, or as to what members were thus present, or as to who voted, or how they voted.

They deny that said Houses or either of them adopted, adjudged or determined that William Goebel was duly or legally elected Governor of the Commonwealth of Kentucky at the election on the 7th day of November 1899, or that he had then or ever received the highest number of legal votes cast at said election, or was entitled to said office of Governor; or that said Houses or either of them decided, adjudged or determined that the defendant J. C. W. Beckham was duly or legally or at all elected Lieutenant Governor of the Commonwealth, or as such entitled to the said office, or that he had received the highest number of legal votes cast thereat.

They say it is true that the pretended determination, judgment and decision of said Houses in joint assembly was entered upon the jonrnals of each House thereof. But they say that said entries were made by the Clerks of said Houses who were friends and partisan followers of the contestants in the execution of a conspiracy between said Clerks and other friends and followers of said contestants who were members of the General Assembly, the object and purpose of which conspiracy was to make the records of said two Houses falsely show that there had been meetings of the

said two Houses, and that the said reports of said Contest Boards had been presented and adopted by said Houses at such meetings. And said entries are untrue and void and not entitled to any faith or credit.

They deny that subsequent to the aforesaid pretended joint session the said House or either of them met separately and considered or approved the said reports and findings or any of them, or adjudged or determined that William Goebel was duly or legally or at all elected to the office of Governor or entitled to the same, or that he had received the highest number of legal votes cast at said election; or that J. C. W. Beckham was duly elected to or entitled to the office of Lieutenant Governor, or had received the highest number of legal votes cast at said election. And they deny that at the time of said pretended action by said Houses separately nineteen senators were a majority of the members of the Senate.

They admit that the said pretended determination and decisions of said two Houses acting separately were entered upon the journals thereof by the clerks thereof; but they say that such entries were false and fraudulent, and made pursuant to the conspiracy heretofore mentioned, and for the purposes heretofore explained, and are entitled to no faith or credit.

They deny upon the alleged adjudication or determination by said Houses of the General Assembly all or any of the powers or authority of the plaintiff William S. Taylor as Governor ceased, or that thereupon all or any of the powers of the defendant John Marshall as Lieutenant Governor ceased.

They have no knowledge or information sufficient to form a belief as to whether or not the oath of office prescribed by the Constitution and laws of Kentucky to be taken by the Governor was administered to or taken by William Goebel on the day of February, 1900, or at any time; or as to whether or not he then or there or at any time assumed the office of Governor or entered upon the discharge of the duties thereof. They have no knowledge or information sufficient to form a belief as to whether or not he died on the 3rd day of February 1900, or as to when he died, though they admit that he is dead.

They deny that immediately upon the death of William Goebel, or at any time, J. C. W. Beckham became entitled to be inducted into the office of Governor. They have no knowledge or information sufficient to form a belief as to whether or not on the day of February, 1900, he took the oath of office as Lieutenant Governor; or as to whether or not he took such oath before the death of said William Goebel.

They deny that plaintiff, William S. Taylor, on the 30th day of January, 1900, or at any time, unlawfully took possession of the Capitol or public buildings of the seat of government in the City of Frankfort, but say that he had been in lawful possession thereof since December 9th, 1899, and so continues to the present

time. They deny that at any time he took possession of any of said buildings or property with an armed body of lawless men; or on that day refused to allow the members of the General Assembly to meet in the Capitol of the Commonwealth; or that said members of the General Assembly attempted to meet on that day, to-wit, January 30th, 1900, at any other place than in the chambers of the Capitol of the Commonwealth.

He admits that he did on January 31st, 1900, refuse to permit the members of the General Assembly from meeting as the General Assembly in Frankfort, but says this was solely because he had previously, in the exercise of his lawful authority as Governor, adjourned the said General Assembly to meet on February 6, 1900, in the town of London, Kentucky. He denies that his action in adjourning said General Assembly was unlawful, wrongful or corrupt, or for any corrupt or unlawful purpose.

He denies that at any time he excluded the Court of Appeals from the Capitol buildings in the city of Frankfort.

He denies that at any time he kept or maintained a large or any body of lawless or desperate men in control of any buildings, or that he by any such means, or at all put the life of any member of the General Assembly in peril.

He denies that the General Assembly adjourned on the day of February, 1900, or at any time to the City of Louisville, or that it ever held any sessions in the city of Louisville, or that it ever adjourned from the city of Louisville back to the seat of government; though plaintiffs admit that some of the members of said General Assembly did go through the void form of pretending to adjourn to Louisville and to meet in session at Louisville and then to adjourn back to the seat of government.

Defendants deny that on February 19th, 1900, or at any time the Senate of Kentucky adopted the resolution alleged to have been adopted on that day; or that on the 20th day of February, or at any time, the House of Representatives or the General Assembly of Kentucky in joint sesssion adopted said resolution; or that by the adoption of any such resolution any former action of the General Assembly was ratified or reaffirmed.

They admit that said pretended acts of ratification and adoption were entered upon the journals of the said two Houses; but they say that said entries are false, and were made in execution of the conspiracy heretofore mentioned, and for the purposes heretofore mentioned, and are not entitled to any faith or credit.

They deny that by any determination or adjudication of the General Assembly the powers of plaintiff, Taylor as Governor have ever ceased. They deny that his possession of the records, archives and papers pertaining to the office of Governor, or his possession of the buildings of the State is unlawful or wrongful; or that he maintained such possession with any force of lawless

men; or that he is usurping the office of Governor of the Commonwealth.

They deny that by the decision of said Boards of Contest in the offices of Governor or Lieutenant Governor, William Goebel became or was Governor, or that the defendant J. C. W. Beckham became or was Lieutenant Governor; or that upon the death of said Goebel the defendant Beckham became entitled to or it was his duty to exercise all or any of the power or authority pertaining to the office of Governor. They deny that he was duly or at all inducted into said office; or is now entitled to the possession of any of the records, archives, journals or papers, or the possession of the Executive offices in the Capitol in the City of Frankfort.

They deny that plaintiff Taylor has usurped the office of Governor, or is unlawfully or wrongfully drawing warrants, or unlawfully maintaining an armed body of men in and about the Capitol building, or unlawfully or wrongfully appropriating the moneys or revenues of the Commonwealth to the payment of any lawless band of men or at all, or unlawfully or wrongfully doing any acts, or that he has in any way created confusion, distrust and uncertainty in the affairs of the State.

They deny that the claim of plaintiff John Marshall to the right to preside over the Senate is wrongful, or that thereby or at all he prevents the proper legislation of the General Assembly, or the proper legal discharge of its duties, or embarrasses or impedes the defendant Beckham in discharging his duties as Governor.

They deny that the plaintiff Taylor has caused the laws of the State to be defied or set at naught, or has caused a citizen to be arrested without due process or unlawful authority, or refused to obey a writ of *habeas corpus* duly and legally issued by a Court of competent jurisdiction, or is by his conduct bringing the State or any department thereof into disrepute, or casting a cloud upon the acts of government done in the affairs of the State, or has threatened to or will continue to usurp the office of Governor or to wrongfully dispose of or appropriate the moneys and revenue of the Commonwealth, or do any other acts of usurpation; or that any great or irreparable injury, or any injury will result to the defendants or either of them, or to any tax-payer or good citizen of the Commonwealth by any act of either of the plaintiffs herein.

They deny that defendant L. H. Carter was by the Senate elected president *pro tempore* of the said Senate. They deny that he ever has presided over the Senate of Kentucky, or has the right to do so.

They deny that the defendant Beckham has ever entered upon the discharge of any duties as Governor, or that he ever had the lawful right to do so, or that he did in pursuance of any powers possessed in him by law appoint the defendant John B. Castleman to be Adjutant General of the Commonwealth, though he did pretend to do so; or that said Castleman entered upon the discharge

of the duties of said office as such officer, though he did pretend to do so.

Par. 3. The third paragraph of this reply, as shown by an agreed schedule and stipulation hereinafter filed and copied, is the same as the third paragraph of the answer and counterclaim in the case of Beckham vs. Taylor, heard with this case, and to which by consent, as shown in said stipulation, reference is now hereby made instead of copying it in full herein.

At a Court held on the 2nd day of March, 1900:

This day came the defendants by their attorneys and filed their joint amended answer and counter-claim herein.

This day came the defendant by their attorneys and filed a demurrer to certain allegations of the second and third paragraphs of the reply herein.

This day came the defendants, by their attorneys, and on written motion filed, moved the Court to strike from the reply of the plaintiff in these causes all the words and figures thereof, beginning on the first page thereof with the words, "They deny," and ending on the eighth page thereof with the words "of either of the plaintiffs herein."

2. The defendants move the Court to strike out the entire third paragraph of plaintiff's reply and all the words and figures thereof, beginning on page 9 of said reply, with the words, "further answering herein," and ending on the last page of said reply with the words, "for plaintiff's costs herein expended," to all of which the plaintiffs object.

This action having been heard in part on said demurrer and motion and there not being time to complete the argument ordered that this action be postponed to March 3, 1900, for the completion of said argument.

Said amended answer and counter-claim filed on the 2nd day of March, 1900, is as follows:

AMENDED ANSWER AND COUNTERCLAIM.

The defendants, J. C. W. Beckham, John B. Castleman, and L. H. Carter, for amendment to their answer and counterclaim herein, aver that on the 31st day of Jan. 1900, William Goebel, who was then a Senator from the 24th Senatorial District of Kentucky, duly elected and qualified as such, resigned, in writing, his said

office, as Senator aforesaid, and the same was duly accepted by the presiding officer of the Senate, and by the Senate of Kentucky, in open session; which fact was entered at large upon the Journal of the Senate; an attested copy of which Journal is filed as part of the original petition herein.

The defendants further aver that Hon. T. M. Hill, who was elected a Senator from the 25th Senatorial District of Kentucky on the 7th day of November, 1899, has never been sworn, or qualified, as such Senator, or, at any time, appeared in the Kentucky Senate, or entered upon the discharge of his duties in any manner, as such Senator; that the resignation of said Goebel, as Senator aforesaid, was delivered and accepted before the Senate of Kentucky, or the joint session of the Senate and House of Representatives were convened to consider, or did, in any manner consider the reports of the Contest Boards for Governor, or Lieutenant Governor, as alleged in the petition herein; but the said matters were all duly considered and acted upon in joint session, and by each house, separately, after the resignation aforesaid had been received and accepted.

WHEREFORE, the defendants pray as in their original answer and counterclaim, and for all proper relief.

PHELPS, MCQUOWN &C.
Attys.

Said demurrer filed on the 2nd day of March, 1900, is as follows, to-wit:

DEMURRER TO REPLY.

The defendants, J. C. W. Beckham, John B. Castleman and L. H. Carter, demur to the following parts of paragraph 2nd of the reply filed herein, viz.:

1. Beginning on the first page of paragraph 2nd thereof with the words, "they deny," down to and including the words, "Boards of Contest and each of them," on the 2nd page of said reply.

2. Beginning on page 2nd, same paragraph, with the words, "defendants deny," down to and including the words, "fraudulent and utterly void" on the 3rd page.

3. Beginning on page 3 of same paragraph with the words, "they deny," down to and including the words, "as Lieutenant-Governor ceased," on the 5th page.

4. Beginning on page 5, of same paragraph with the words, "they have no knowledge," down to and including the words, "Seat of Government," on the 6th page.

5. Beginning on page 6 of same paragraph, with the words, "plaintiffs deny that" down to and including the words, "any faith or credit," on the 7th page.

6. Beginning on page 7 of same paragraph with the words, "they deny that by," down to and including the words, "either of the plaintiffs herein," at the close of said paragraph on page 8.

7. Beginning on page 9 of 2nd paragraph (so called by mistake) with the words, "further answering herein," down to and including the words on said page, "trustees these plaintiffs are."

8. Beginning on page 9, same paragraph, with the words, "on Nov. 7th, 1899," down to and including the words on page 20th, "Signed Wm. Goebel."

9. Beginning with the words, "plaintiffs say," on page 21, same paragraph, down to and including the words, "under the form of law," on page 37.

10. Beginning with the words, "ground of contest," on page 37, same paragraph, down to and including the words, "said contest Committees, on page 49.

11. Beginning with the words, "Legislative proceedings" on page 50, same paragraph, down to and including the words, "State of Kentucky," on page 53.

12. Beginning with the words, "defendants further say," on page 53, same paragraph, down to and including the words, "herein expended" at the close of said reply.

For cause of demurrer, the said defendants say that neither of the said parts of the said reply, as herein designated, considered separately or together, constitute any defense against, or avoidance of the cause of action set up in the defendants answer and counterclaim filed herein; and of this the defendants pray the judgment of the Court.

W. S. PRYOR,
McQUOWN,
KOHN, BAIRD, &C.,
Z. PHELPS,
Attys for Defendants.

At a Court held on the 3rd day of March, 1900:

This day came the plaintiffs, by counsel; and filed an amended reply herein.

This action having been heard on the defendants' demurrer to and motion to strike from the reply herein and the Court not being advised said demurrer and motion was submitted.

Said amended reply filed on the 3rd day of March, 1900, was the same as the first amended answer filed in the case of Beckham

vs. Taylor, with which this was heard, and to which reference is now made, pursuant to stipulation hereinafter filed and copied herein.

On March 12, 1900, the Court delivered and filed a written opinion herein, which is copied in the said record of Beckham vs. Taylor, to which is hereby made for same, pursuant to said stipulation.

At a Court held on the 17th day of March, 1900:

This day came the plaintiffs by counsel, and filed an amended reply herein.

Said amended reply is the same as the second amended answer filed in the said case of Beckham vs. Taylor, to the record of which reference is hereby made, pursuant to the stipulation aforesaid.

At a Court held on the 19th day of March, 1900:

This day came the defendants and filed a demurrer to certain parts of the first amended reply.

Came the defendants and also moved the Court to strike out certain parts of said first amended reply.

Came the defendant, by counsel: and filed a demurrer to the second paragraph of the second amended reply of the plaintiffs.

Came the defendant, by counsel, and on written motion filed moved the Court to strike from the second amendment to the reply, which was filed herein on March 16th, 1900, each and all of the words and figures contained in the second paragraph thereof, beginning with the words, "as to proclamation of the defendant Taylor as Governor," on the first page thereof, and ending with the words, "provisions of the constitution of the United States," on the fifth page thereof.

Came the defendants, by counsel, and filed a rejoinder to the reply of the plaintiff.

By consent and agreement of parties herein, by counsel it is ordered that all the demurrers and motions filed herein of this date be and are submitted.

Said demurrer filed on the 19th day of March, 1900, to certain parts of the first amended reply is as follows, to-wit:

DEMURRER TO FIRST AMENDED REPLY.

The defendants, J. C. W. Beckham, John B. Castleman and L. H. Carter demur to the following parts of the first amended reply and also move to strike from said first amended reply said parts as follows, viz:

All that part thereof beginning with the words, "they have no knowledge," in the 2nd line of page 1st down to and including the words, "or by the Senate," in the 7th line of said reply:

All that part thereof beginning with the words, "they deny that" in the 11th line on the 1st page, down to and including the words "from Dec. 9th, 1899" at the close of said reply on the 3rd page thereof.

Because they say that the said parts of said amended answer and reply are not sufficient in law and are irrelevant and immaterial; And of this they pray the judgment of the Court.

Said demurrer filed on the 19th day of March, 1900, to second paragraph of second amended reply is as follows, to-wit:

GENERAL DEMURRER TO SECOND AMENDED REPLY.

Comes the defendant J. C. W. Beckham and demurs generally to the second paragraph of the second amended reply of the plaintiffs, W. S. Taylor and others, and for grounds says that the same does not state facts sufficient to constitute or support a defense herein.

ORDER.

I.

At a Court held on the 22nd day of March, 1900:

The defendants demurrer to parts of the reply of the plaintiffs, William S. Taylor and John Marshall, filed in suit No. 24187, is sustained as to the following parts of paragraph 2nd of said reply viz:

"They deny that on the day named in the pleading or at all "the Senate of Kentucky did by lot or at all select three of its "members to act as members of the Board of Contest for the "trial of the contest of the office of Governor of this Common-"wealth, or did, by lot or at all select three of its members to "act upon the Board of Contest for the trial of the contest for "the office of Lieutenant Governor of this Commonwealth; or "that the House of Representatives of said General Assembly "did by lot or at all select eight of its members to act upon the "Board of Contest of the trial of the contest for the office of "Governor, or did, by lot or at all select eight of its members to "act upon the Board of Contest for the contest for the office of "Lieutenant Governor.

"They admit that the said Senate and House of Represent-"atives did upon the day named in the pleading pretend to

"select by lot members of the said respective bodies to act upon "the said respective Boards of Contest. But defendants say "that the pretended selection was not in fact by lot, but was "conducted by means of a fraudulent arrangement, the exact "nature of which these defendants are not able to state, by "means of which it was known in advance of the pretended "selection to the contestants, William Goebel and J. C. W. "Beckham and their friends and managers, who would be the "persons selected as members of said Boards, or at least, it was "known to said parties, in advance of said apparent selection, "what would be the political beliefs of the persons to be thus "selected, and what their feelings and inclinations and desires "upon the subject of the contests to be tried by them, and knew "they would be the partisan friends and followers of said con- "testants. And said pretended selections by the House and "by the Senate were fraudulent and utterly void, as were all of "the subsequent proceedings of said pretended Boards of Con- "test and each of them.

"Defendants deny that on Jan. 30th, 1900, or at any time, "they or either of them consented to submit said contests to "said Boards for judgment without argument. The truth as to "said subject will be stated in a subsequent paragraph hereof.

"They deny that said Boards or either of them duly or at "all considered either the matters of law or the facts involved in "said contests, or that they did separately or at all decide the "contests submitted to them; although they admit that the said "Boards did go through the form, and make a pretense of de- "ciding the said contests, and did make out in writing their "pretended decisions, which, however, were fraudulent and "utterly void.

"They deny that on the day of January, 1900, or at any "time each of said Boards or either of them reported its deci- "sion to each or either house of the General Assembly.

"They admit that in the contest for Governor the Board of "Contest pretended to determine, adjudge and decide that the "contestant for the office of Governor was duly elected Gov- "ernor for the term beginning December 12th, 1899, and that he "had received the highest number of legal votes cast at said "election, and was entitled to said office; and that in like "manner the Board of Contest for the office of Lieutenant "Governor did pretend to decide, adjudge and determine that "the plaintiff, J. C. W. Beckham, contestant for the office of "Lientenant Governor, was duly elected to that office and had "recived the highest number of legal votes and was entitled to "said office; but they say that said pretended decisions were "fraudulent and utterly void.

"They deny that the said decisions or reports, or either of "them, were thereafter adopted or approved by both houses of

"the General Assembly in joint assembly. They deny that at "the time of said pretended adoption of said reports nineteen "members of the Senate constituted a majority of the members "of the Senate. They have no knowledge or information sufficient to form a belief as to whether or not all of the members of said houses who may have been present at any secret "meeting of said members voted to adopt or approve the aforesaid alleged reports of said Contest Boards, or as to what "members were thus present, or as to who voted, or how they "voted.

"They deny that said Houses or either of them adopted, adjudged or determined that William Goebel was duly or legally "elected Governor of the Commonwealth of Kentucky at the "election on the 7th day of November, 1899, or that he had "then or ever received the highest number of legal votes cast "at said election, or was entitled to said office of Governor; or "that said Houses or either of them decided, adjudged or determined that the plaintiff, J. C. W. Beckham, was duly or "legally or at all elected Lieutenant Governor of the Commonwealth, or as such entitled to the said office, or that he had "received the highest number of legal votes cast thereat.

"They say it is true that the pretended determination, judgment and decision of said Houses in joint assembly was entered upon the journals of each House thereof. But they say "that said entries were made by the Clerks of said Houses "who were friends and partisan followers of the contestants in "the execution of a conspiracy between said Clerks and other "friends and followers of said contestants who were members "of the General Assembly, the object and purpose of which "conspiracy was to make the records of said two Houses falsely "show that there had been meetings of the said two Houses, "and that the said reports of said Contest Boards had been presented and adopted by said Houses at such meetings. And "said entries are untrue and void and not entitled to any faith "or credit.

"They deny that subsequent to the aforesaid pretended joint "session the said Houses or either of them met separately and "considered or approved the said reports and findings, or any "of them, or adjudged or determined that William Goebel was "duly or legally or at all elected to the office of Governor or "entitled to the same, or that he had received the highest number of legal votes cast at said election; or that J. C. W. "Beckham was duly elected to or entitled to the office of Lieutenant Governor, or had received the highest number of legal "votes cast at said election. And they deny that at the time "of said pretended action by said Houses separately nineteen "Senators were a majority of the members of the Senate.

"They admit that the said pretended determination and decisions of said two Houses acting separately were entered

"upon the journals thereof by the clerks thereof; but they say "that such entries were false and fraudulent, aud made pursu- "ant to the conspiracy heretofore mentined, and for the purposes "heretofore explained, and are entitled to no faith or credit.

"They deny that upon the alleged adjudication or determi- "nation by said Houses of the General Assembly all or any of "the powers of authority of William S. Taylor, as Governor "ceased, or that thereupon all or any of the powers of the de- "fendant John Marshall as Lieutenant Governor ceased.

"He admits that he did on January 31st, 1900, refuse to per- "mit the members of the General Assembly from meeting as "the General Assembly at Frankfort, but says this was solely "because he had previously in the exercise of his lawful au- "thority as Governor adjourned the said General Assembly "to meet on February 6th, 1900, in the town of London, Ken- "tucky. He denies that his action in adjourning said General "Assembly was unlawful, wrongful or corrupt, or for any cor- "rupt or unlawful purpose.

"He denies that the General Assembly adjourned on the " day of February, 1900, or at any time to the City of Louis- "ville or that it ever held any sessions in the City of Louis- "ville or that it ever adjourned from the City of Louisville back "to the seat of government; though plaintiffs admit that some "of the members of said General Assembly did go through the "void form of pretending to adjourn to Louisville and to meet "in session at Louisville and then to adjourn back to the seat "of Government.

"Plaintiffs deny that on February 19th, 1900, or at any "time the Senate of Kentucky adopted the resolution alleged "to have been adopted on that day; or that on the 20th day of "February, or at any time, the House of Representatives or the "General Assembly of Kentucky in joint session adopted said "resolution; or that by the adoption of any such resolution any "former action of the General Assembly was ratified or re- "affirmed.

"They admit that said pretended acts of ratification and "adoption were entered upon the journals of the said two "Houses; but they say that said entries are false and fraudulent, "and were made in execution of the conspiracy heretofore men- "tioned, and for the purposes heretofore mentioned, and are not "entitled to any faith or credit.

"They deny that by any determination or adjudication of "the General Assembly the powers of defendant Taylor as Gov- "ernor have ever ceased. They deny that his possession of the "records, archives and papers pertaining to the office of Gov- "ernor, or his possession of the buildings of the State is unlaw- "ful or wrongful; or that he maintained such possession with "any force of lawless men; or that he is usurping the office of "Governor of the Commonwealth.

"They deny that by the decision of said Boards of Contest "in the office of Governor or Lieutenant Governor, William "Goebel became or was Governor; or that the defendant J. C. "W. Beckham became or was Lieutenant Governor; or that "upon the death of said Goebel the defendant Beckham became "entitled to or it was his duty to exercise all or any of the "power and authority pertaining to the office of Governor. "They deny that he was duly or at all inducted into said office; "or is now entitled to the possession of any of the records, "archives, journals or papers, or the possession of the execu- "tive offices in the Capitol in the City of Frankfort."

The said demurrer and motion to strike out are sustained as to the entire third paragraph of the said reply, except the following words thereof, viz: "Defendants further say that heretofore and while the contest over the office of Governor was pending, the aforesaid William Goebel died, and the contest which he had theretofore inaugurated as heretofore stated, did then and there abate."

The plaintiffs, William S. Taylor and John Marshall, except to the foregoing order and judgment.

The demurrer to the remainder of said reply is overruled. The plaintiffs are given leave to amend the said reply, if they should desire to do so.

II.

Defendant Beckham having filed a general demurrer to the whole of the first amended reply filed herein except to the following words therein, to wit:

"They say that the Honorable T. M. Hill, who was elected "a senator from the Twenty-Fifth Senatorial District, has been "sworn and qualified as such Senator, and was thus sworn and "qualified prior to January 31st 1900."

And having also moved the Court to strike out from said amended reply all the portions thus demurred to.

By consent it is ordered that the order entered filing said demurrer and making said motion be and they are entered by consent of all parties as of March 3rd, 1900.

And the Court being sufficiently advised it is considered that said demurrer be and it is hereby sustained; to which plaintiffs except.

III.

Then came defendants and filed a general demurrer to the second paragraph of the second amended reply filed herein, to wit, on March 17th, 1900, and also entered a motion to strike out said second paragraph, to which plaintiffs objected.

And the Court being sufficiently advised it is considered by the Court that said demurrer be and it is hereby sustained; to which plaintiffs except.

Said rejoinder filed on the 19th day of March, 1900, is as follows, towit:

REJOINDER.

The defendant, J. C. W. Beckham, John B. Castleman, and L. H. Carter, for rejoinder to the reply of the plaintiff, deny that while the contest for the office of Governor was pending before the General Assembly of Kentucky, the contestant, William Goebel, died, or that the contest which he had theretofore inaugurated did then or there abate.

WHEREFORE, they pray as in their answer and for all proper relief.

At a court held on March 3, 1900, the Court entered the following order.

JEFFERSON CIRCUIT COURT.

J .C. W. Beckham, ... Plaintiff,
vs. ORDER
W. S. Taylor, &c. . . . . Defendants.

W. S. Taylor, &c. . . . . Plaintiffs,
vs.
J. C. W. Beckham, &c. . . . . Defendants.

This day came all of the parties to the above entitled causes, and by consent, it is ordered that said causes be heard together, and upon the same evidence.

At a court held on March 24, 1900, the Court entered the following order.

JEFFERSON CIRCUIT COURT.

Common Pleas Division.

J. C. W. Beckham, ... Plaintiff,
vs. MOTION AND ORDER.
W. S. Taylor, &c. . . . . Defendants.
W. S. Taylor, &c. . . . . Plaintiffs,
vs.
J. C. W. Beckham, &c. . . . . Defendants.

This day came the parties to the above entitled causes, by counsel, and waived the setting of the same at rules; and thereupon the same were submitted to the Court for determination upon the law and facts, without the intervention of the jury; and W. S. Taylor and John Marshall moved the Court to state in writing the conclusions of fact found, separately from the conclusions of law.

Thereupon, it was agreed by all parties to the action, that the Court might, if it should so desire, simply adopt its written opinion heretofore filed herein, as its statement of its conclusions of law, and might state its conclusions of fact in the judgment; and that the parties might, in the judgment, enter and reserve their exceptions to such conclusions of law and fact, with the same effect as if there had been a separation of conclusions of law and fact and exceptions entered thereto prior to or separately from the judgment.

At a court held on March 24, 1900, the following judgment was entered, viz:

JEFFERSON CIRCUIT COURT.

Common Pleas Division.

J. C. W. Beckham, ... Plaintiff,
vs. No. 24251.
W. S. Taylor, &c. . . . . Defendants.
W. S. Taylor, &c. . . . . Plaintiffs,
vs. No. 24187.
J. C. W. Beckham, &c. . . . . Defendants.

JUDGMENT.

These actions having been submitted to the Court for judgment upon the entire record herein, and the Court being sufficiently advised, it is considered and adjudged by the Court, as follows, to-wit:

1. The Court hereby adopts it written opinion heretofore filed herein as a statement of conclusions of law in this action, to which conclusions, William S. Taylor and John Marshall except.

2. William Goebel and J. C. W. Beckham inaugurated a contest for the offices of Governor and Lieutenant-Governor, respectively, before the General Assembly of Kentucky on the 2d day of January, 1900, against William S. Taylor and John Marshall, and the said contests were finally determined by the General Assembly on the 2d day of February, 1900, at which time it was adjudged and determined by each House of said General Assembly, acting separately, and also in joint session, that the said William Goebel was duly elected Governor of the Commonwealth of Kentucky, for the term beginning December 13, 1899, and was entitled to said office of Governor, and it was then and there in like manner determined by said General Assembly and by each House acting separately and in joint session, that the said J. C. W. Beckham was duly elected Lieutenant-Governor of said Commonwealth for the same term.

3. Immediately after the said determination the oath of office of Governor, as provided by law, was administered to said Goebel, February 2, 1900, and the oath of office as Lieutenant-Governor, as provided by law, was in like manner administered to J. C. W. Beckham.

4. Said William Goebel died on the 3rd day of February, at 6:45 P. M., and shortly thereafter, upon said day, J. C. W. Beckham, as Lieutenant-Governor, was sworn, as required by law, to discharge the duties of the office of Governor of the Commonwealth.

To all of the foregoing conclusions in the second, third and fourth paragraphs of this judgment said Taylor and Marshall except.

5. J. C. W. Beckham was born on the 5th day of August, 1869.

The Court doth now, therefore, adjudge that the defendant, William S. Taylor, has usurped, and is now usurping, the office of Governor of this Commonwealth, and that he be and is hereby deprived thereof, and is adjudged to have no right or title whatever to said office, or to the possession or use thereof.

It is further adjudged that the plaintiff, J. C. W. Beckham, is the duly elected and legally qualified Lieutenant-Governor of the Commonwealth of Kentucky, and as such is entitled to the full possession of the office of Governor from December 13, 1899, until another be duly elected and qualified, and is also entitled to the immediate possession of the Executive offices provided by the Commonwealth for the use of the Governor, located at Frankfort, Ky., in the Capitol building, as well as all of the records, archives, books, papers, journals and other things pertaining to the said office; and it is now adjudged and ordered that the said office, books, papers, archives and journals shall be immediately surrendered by the said Taylor and delivered to the said J. C. W. Beckham.

It is further adjudged that the plaintiff, J. C. W. Beckham, recover of the defendants, W. S. Taylor and John Marshall, his costs herein expended, for which he may have execution.

It is further adjudged that the defendant, L. H. Carter, was duly and regularly elected as President of the Senate of the State of Kentucky, after J. C. W. Beckham qualified and entered upon the discharge of his duties as Governor, aforesaid, and that as such President he is entitled to exercise and discharge the duties of said office of Lieutenant-Governor for the time being, as provided by law.

It is now, therefore, further ordered and adjudged that the defendant, John Marshall, has usurped the office of Lieutenant-Governor, and that he is hereby deprived thereof, and that said L. R. Carter is entitled to the full possession of said office of Lieutenant-Governor, and of all the records, books, papers, journals and other things pertaining to said office, and that the same shall be immediately surrendered by the said John Marshall unto the said L. H. Carter.

It is further adjudged that the said L. H. Carter recover his costs herein expended against the said John Marshall and William S. Taylor, and may have execution therefor.

The Court doth now order and adjudge that the petitions and counter-claims of William S. Taylor and John Marshall herein be and the same are hereby dismissed.

To the judgment of the Court aforesaid, and the conclusions of law and fact therein, the said William S. Taylor and John Marshall, by counsel, objected and excepted, and still object and except, and pray an appeal to the Court of Appeals, which is granted.

On March 24, 1900, the following motion was entered and grounds filed, upon which the following order was entered, viz.:

J. C. W. Beckham, ... Plaintiff,
vs.
William S. Taylor, &c., ... Defendants.

William S. Taylor, &c., ... Plaintiffs,
vs.
J. C. W. Beckham, ... Defendant.

William S. Taylor and John Marshall move the Court to set aside the judgment herein on the following grounds, to-wit:

1. The Court erred in the conclusions of law, and each of them, as stated in its written opinion filed herein, and which is adopted in its judgment herein; and erred particularly in holding that the journals of the Senate and House of Representatives are absolutely conclusive of the truth, and not subject to attack even for fraud, and that the determination of the General Assembly, as shown by said journals, cannot be attacked upon any ground.

2. The finding of the Court to the effect that the contest by William Goebel and J. C. W. Beckham against William S. Taylor and John Marshall over the office of Governor or Lieutenant-Governor, or either of them, were finally determined by the General Assembly on the 2nd day of February, 1900, is not sustained by sufficient evidence and is contrary to law.

3. The finding of the Court that on the day aforesaid, to wit, February 2, 1900, it was adjudged and determined by each House of said General Assembly, acting separately or in joint session, that William Goebel was duly elected Governor of the Commonwealth, or entitled to said office, or that J. C. W. Beckham was duly elected Lieutenant Governor, is not sustained by sufficient evidence and is contrary to law.

4. The finding of the Court to the effect that William S. Taylor is a usurper of the office of Governor, or that John Marshall is a usurper of the office of Lieutenant-Governor is not sustained by sufficient evidence, and is contrary to law.

5. The finding of the Court that J. C. W. Beckham is entitled to the office of Governor or Lieutenant-Governor, or to any of the books, papers or other things pertaining to either of said offices is not sustained by sufficient evidence, and is contrary to law.

6. The finding of the Court that L. H. Carter was elected President *pro tempore* of the Senate or is entitled to exercise the functions of that office, or of Lieutenant-Governor, is not sustained by sufficient evidence and is contrary to law.

The motion for a new trial herein being now submitted and the Court being sufficiently advised it is considered that the foregoing motions for a new trial be and they are hereby overruled, to which the said W. S. Taylor and John Marshall except. Then came said William S. Taylor and John Marshall and each prayed an appeal to the Court of Appeals of Kentucky from the judgment entered in each of the above entitled causes and from the order overruling the said motions for a new trial, which appeals are granted.

On March 24, 1900 appellants caused to be executed before me the following supersedeas bond, viz:

JEFFERSON CIRCUIT COURT.
Common Pleas Division.

COMMONWEALTH OF KENTUCKY, }
Jefferson County. }

W. S. Taylor, &c. . . . . Appellants,
vs. No. 24251.
J. C. W. Beckham . . . . . Appellees.
and
W. S. Taylor, &c. . . . . Appellants,
vs. No. 24187.
J. C.W. Beckham, &c. . . . . Appellees.

Appeal from a judgment of this Court rendered the 24th day of March, 1900.

WHEREAS, said Appellants have taken an appeal from the judgment of this Court rendered on the 24th day of March 1900, against W. S. Taylor and John Marshall in favor of Appellees J. C. W. Beckham and L. H. Carter which judgment is in words and figures as follows: (Here follows in the original bond a full copy of the judgment heretofore copied herein.) And the Appellants desire to supersede said judgment.

Now, we, W. S. Taylor and John Marshall principals and The Fidelity and Deposit Company of Maryland surety do hereby covenant to and with the Appellees J. C. W. Beckham and L. H. Carter that the Appellants will pay to the Appellees all costs and damages that shall be adjudged against the Appellant on the appeal, and also that they will satisfy and perform the said judgment in case it shall be affirmed, and any judgment or order which the Court of Appeals of Kentucky may render, or order to be rendered by the inferior Court, not exceeding in amount or value the judgment aforesaid, and also pay all rents, hire or damage which, during the pendency of the appeal, may accrue on any part of the property of which the Appellee is kept out of possession by reason of the appeal.

WITNESS our hands this 24th day of March 1900

W. S. Taylor, by Helm Bruce, Attorney. [SEAL]
John Marshall, by Helm Bruce, Attorney. [SEAL]
Fidelity & Deposit Company of Maryland. [SEAL]
By J. S. Bell, Attorney in fact. [SEAL]

ATTEST:
Jno. H. Page, Clerk.
By Wm. D. Reed, D. C.

Whereupon the folllowing supersedeas was issued and lodged in the papers of the case, viz:

STATE OF KENTUCKY, } Jefferson Circuit Court.
Jefferson County. }

W. S. Taylor, &c. . . . . Apellants,
vs. No. 24251.
J. C. W. Beckham, &c. . . . . Appellee.
and
W. S. Taylor, &c. . . . . Appellants,
vs. No. 24187.
J. C. W. Beckham, &c. . . . . Appellees.

I, John H. Page, Clerk of the Jefferson Circuit Court, Common Pleas Division in the County and State aforesaid, do hereby certify that an appeal has been granted from this Court from a judgment obtained by J. C. W. Beckham and L. H. Carter against W. S. Taylor and John Marshall for the offices of Governor and Lieutenant-Governor of Kentucky and the books papers and other things pertaining to the same in the Jefferson Circuit Court, Common Pleas Division, on the 24 day of March 1900 and that a supersedeas bond has been executed after the appeal was granted. Therefore the Appellee and all others are commanded to stay proceedings, on the judgment aforesaid.

Witness, John H. Page, Clerk of said Court, this 24th day of March, 1900.

JNO. H. PAGE, Clerk.
By WM. D. REED, D. C.

On March 24, 1900, the following order was entered, viz:

JEFFERSON CIRCUIT COURT,
Common Pleas Division.

J. C. W. Beckham, ... Plaintiff,
vs.
W. S. Taylor, &c. . . . . Defendants.

W. S. Taylor, &c. . . . . Plaintiffs,
vs.
J. C. W. Beckham, &c. . . . . Defendants.

This day came defendants in the first action mentioned above, and the plaintiffs in the second action mentioned above, and filed in said actions their bill of exceptions; and the same having been examined was approved by the Court and signed by the Honorable Emmett Field, Judge thereof.

Said bill of exceptions is the same as that in Beckham vs. Taylor, to which reference is hereby made pursuant to the stipulation aforesaid.

This day the parties hereto and filed in the clerk's office an agreed schedule or stipulation as to copying the record, to which reference has heretofore been made, and which is as follows, viz:

AGREED SCHEDULE.

In copying the record herein for the Court of Appeals the following directions will be observed by the clerk:

1. The clerk will omit the third paragraph of the original reply, simply inserting in lieu thereof the statement that it is the same as the third paragraph of the answer of defendants in Beckham vs. Taylor heard with this case.

2. The clerk after the order filing the first and second amended replies, need not copy said pleadings, but may simply insert a statement that they are the same as the first and second amended answer in Beckham vs. Taylor.

3. The clerk may omit the copy of the Court's opinion on the demurrers, simply referring to the case of Beckham vs. Taylor for it.

4. The clerk may omit the bill of exceptions, simply stating that it is the same as that filed in the case of Beckham vs. Taylor.

HELM BRUCE & HELM, &c.,
Attorneys for Plaintiffs.
LOUIS MCQUOWN,
Z. PHELPS,
for Beckham, &c.

STATE OF KENTUCKY,
COUNTY OF JEFFERSON.

I, John H. Page, Clerk of the Jefferson Circuit Court for the State and county aforesaid, do hereby certify that the foregoing printed pages do contain and constitute a true and complete transcript of the record in the case of W. S. Taylor and John Marshall vs. J. C. W. Beckham, &c., except so much of said record as is omitted pursuant to stipulation filed in the cause and copied herein, as appears of record in my said office.

Given under my hand as said Clerk this day of 1900.

Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky on the 2nd day of April, 1900, the following order was entered herein:

Taylor, &c., vs. Beckham,
Taylor, &c., vs. Beckham, &c., ... Jefferson.

These cases are by consent ordered to be heard together. The appellees tendered and moved the Court to file a copy of the proceedings of the Senate of February 19, 1900, to which appellants objected, and these causes coming on to be heard were argued by W. S. Pryor and Lewis McQuown for appellees and W. O. Bradley and Helm Bruce for appellants and submitted.

By consent the copy of Senate proceedings referred to in above order are not copied herein. Clerk C. A.

Afterwards on the 6th day of April, A. D. 1900, at a Court of Appeals held as aforesaid, the following orders and judgments were entered herein:

William S. Taylor, &c., ... Appellants,
vs.
J. C. W. Beckham, ... Appellee.

William S. Taylor, &c., ... Appellants,
vs.
J. C. W. Beckham, &c., ... Appellees.

Appeals from the Common Pleas Division of Jefferson Circuit Court.

The Court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that the judgments herein be affirmed, which is ordered to be certified to said Court. Judge Burnam delivered a separate opinion in which Judge Guffy concurs. Judge DuRelle delivered a dissenting opinion.

These opinions are the same as in case of W. S. Taylor and John Marshall vs. J. C. W. Beckham, this day certified.

Afterwards on April the seventh the appellants and plaintiffs in error filed in the Clerk's Office of the Court of Appeals their writ of Error as follows (a copy of which remains on file in the Clerk's Office):

UNITED STATES OF AMERICA,
DISTRICT OF KENTUCKY, } ss.
SIXTH JUDICIAL DISTRICT,

THE PRESIDENT OF THE UNITED STATES,

To the Honorable the Judges of the Court of Appeals of Kentucky, Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals,

before you or some of you, being the highest Court of law or equity of said State in which a decision could be had in a suit between Wm. S. Taylor and John Marshall, appellants, and J. C. W. Beckham, appellee, wherein was drawn in question the validity of a Statute or Constitution of, and an authority exercised under, said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of their validity, and where a right, title, privilege and immunity were claimed under the Constitution of the United States and the decision was against the right, title, privilege and immunity specifically set up and claimed under said Constitution, a manifest error hath happened, to the great damage of the said William S. Taylor and John Mahshall and the people of Kentucky, whom, in their pleadings in said cause, they claim to represent, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, in the District of Columbia on the seventh day of May next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of U. S. Circuit Court.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of April, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth.

W. G. CHAPMAN,
Clerk of the Circuit Court of the United States, for the District of Kentucky.

By F. R. Wiard, D. C.

ALLOWED BY:

JAMES H. HAZELRIGG,
Chief Justice Court of Appeals of Kentucky.

On the same day the plaintiffs in error filed in the Clerk's Office this assignment of errors and bond as follows:

SUPREME COURT OF THE UNITED STATES.

William S. Taylor,
John Marshall, ... Plaintiffs in Error.
versus Assignment of Errors and Prayer for Reversal.
J. C. W. Beckham,
L. H. Carter,
John B. Castleman, ... Defendants in Error.

Plaintiffs in error, William S. Taylor and John Marshall, say that the Court of Appeals of Kentucky erred in its judgment lately rendered in the case of themselves against J. C. W. Beckham, L. H. Carter, and John B. Castleman (from which judgment a writ of error has been granted to the Supreme Court of the United States), in the following particulars, viz:

1. In holding that the action of the General Assembly of the Commonwealth of Kentucky, or contest tribunal, referred to in the answer and reply in said case, declaring that William Goebel received the highest number of votes for Governor on November 7th, 1899, and that J. C. W. Beckham received the highest number of votes for Lieutenant Governor at said election, and that said Taylor and Marshall were not respectively elected Governor and Lieutenant Governor, but that Goebel and Beckham were elected to said offixes respectively, was due process of law; and that neither said Taylor nor Marshall, nor any citizen of Kentucky, was thereby deprived of life, liberty, or property, or of any right, privilege or immunity, without due process of law, within the meaning of the Constitution of the United States of America.

2. In holding that said action of the General Assembly, or contest tribunal aforesaid, did not deprive the said Taylor or Marshall, or any citizen of Kentucky, of the benefit of a Republican form of government as guaranteed by the Constitution of the United States.

3. In holding that neither the Constitution of Kentucky nor the statute governing elections, as made and enforced by the State of Kentucky, abridged the privileges and immunities of said Taylor and Marshall, or any citizen of Kentucky, as a citizen of the United States, as forbidden by the Constitution of the United States; and that it had no power or jurisdiction to, in any way, interfere with the action of said General Assembly.

4. In holding that said General Assembly had jurisdiction to declare said Goebel and Beckham to have been respectively elected Governor and Lieutenant Governor on the grounds set forth in their notices of contest by resolution, and that the resolution making such declarations was not required to be presented to the Governor for his approval, and that the actions by said General

Assembly were in all respects lawful and effective and could not be attacked for fraud or upon any ground, but were absolutely above and beyond any judicial inquiry.

5. In holding that the General Assembly, or either House, or both Houses of same, had determined the said contest in favor of said Goebel and Beckham.

Wherefore, plaintiffs in error pray that the judgment of said Court of Appeals of Kentucky be reversed and cause remanded with directions to order that judgment be rendered in conformity with the prayer of the petitions enjoining and restraining said Beckham from claiming the right to act as Lieutenant Governor or Governor of Kentucky, and against the said Carter restraining and enjoining him from attempting to preside in or over, or claiming the right to preside over, the Senate of Kentucky, and against the said Castleman enjoining and restraining him from attempting to act as Adjutant General, or claiming the right to act as Adjutant General; and restraining each of said Defendants from interfering with, or in any way disturbing the said Taylor, and Marshall in the performance of their duties as Governor or Lieutenant Governor of the Commonwealth of Kentucky.

April 7th, 1900.

Signed. WILLIAM O. BRADLEY,
W. H. YOST,
D. W. FAIRLEIGH,
BRECKENRIDGE & SHELBY,
HELM, BRUCE & HELM,
Counsel and Attorneys for Plaintiffs in Error.

COURT OF APPEALS OF KENTUCKY.

William S. Taylor,
John Marshall, ... Appellants,
vs.
J. C. W. Beckham,
L. H. Carter,
John B. Castleman, ... Appellees.

Know All Men by These Presents,

That we, William S. Taylor and John Marshall and the Fidelity & Deposit Company of Maryland are held and firmly bound unto J. C. W. Beckham, L. H. Carter and John B. Castleman in the sum of twenty-five hundred dollars, to be paid to the said obligees herein and each of them, or to the executors or administrators of them or each of them. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this seventh day of April, A. D. 1900.

WHEREAS, The above named William S. Taylor and John Marshall have prosecuted a writ of error from the Supreme Court of the United States to the Court of Appeals of Kentucky to reverse the judgment rendered in the above entitled suit, by the Court of Appeals of Kentucky, at Frankfort.

Now, therefore, the condition of this obligation is such, that if the above named William S. Taylor and John Marshall shall prosecute their said writ of error to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

William S. Taylor, [L. S.]
By Helm Bruce, Attorney in fact and law.
John Marshall, [L. S.]
By Helm Bruce, Attorney at law and in fact.
Fidelity & Deposit Company of Maryland, [L. S.]
By J. S. Bell, Agent and Attorney.

Sealed and delivered in presence of and
approved by James H. Hazelrigg, Chief
Justice Court of Appeals of Kentucky.

UNITED STATES OF AMERICA,
DISTRICT OF KENTUCKY, } ss.
SIXTH JUDICIAL CIRCUIT,

To J. C. W. Beckham, L. H. Carter and John B. Castleman, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington in the District of Columbia on the Seventh day of May next, pursuant to a writ of Error filed in the Clerk's Office of the Court of Appeals of Kentucky, wherein William S. Taylor and John Marshall, for themselves and claiming by their pleadings to represent the people of Kentucky, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the United States, this seventh day of April, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth.

JAMES H. HAZELRIGG,
Chief Justice Court of Appeals of Ky.

Service of Citation accepted April 7, 1900.
WILL S. PRYOR,
Atty. for defendants in error.

COMMONWEALTH OF KENTUCKY.

I, Samuel J. Shackelford, Clerk of the Kentucky Court of Appeals, certify that the foregoing is a true copy of the record and proceedings had in said court in the case of William S. Taylor and John Marshall, appellants, vs. J. C. W. Beckham, L. H. Carter, and John B. Castleman, appellees (except such record as is certified this day in the case of said Taylor and Marshall, appellants, vs. J. C. W. Beckham, appellee) as the same appears of record and on file in my office, together with the original writ of error and citation, and copies of the bond and assignment of errors.

In Testimony Whereof I have hereunto set my hand and affixed the seal of my office.

Done at Frankfort, Kentucky, this 14th day of April, 1900.

SAMUEL J. SHACKELFORD, Clerk,
By ROBERT L. GREEN, Deputy Clerk.

943
S. C.

No. 603 and 604.

Motion to advance.

Office Supreme Court U. S.
FILED
APR 16 1900
JAMES H. McKENNEY,
Clerk.

Filed April 16, 1900.

Supreme Court of the United States

WILLIAM S. TAYLOR AND JOHN MARSHALL, ... *Plaintiffs in Error,*

vs.

J. C. W. BECKHAM, ... *Defendant in Error.*

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WILLIAM S. TAYLOR AND JOHN MARSHALL, ... *Plaintiffs in Error,*

vs.

J. C. W. BECKHAM, L. H. CARTER, AND JOHN B. CASTLEMAN, ... *Defendants in Error.*

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The undersigned, being respectively counsel for plaintiffs in error and defendants in error in the above entitled causes, respectfully present to the Court the following statements and requests:

1. Plaintiff in error, William S. Taylor, and defendant in error, J. C. W. Beckham, each claims to be Governor of Kentucky.

Plaintiff in error, John Marshall, claims to be Lieutenant Governor of Kentucky, with the right and power to preside over the Senate of Kentucky; while defendant in error, L. H. Carter, denies this claim, and himself claims to be President *pro tempore* of the Senate, with right and power to preside over said Senate, even though said Marshall be present.

Defendant in error, John B. Castleman, claims to be Adjutant General of Kentucky, under an appointment by said J. C. W.

Beckham as Governor; and this claim is denied by plaintiffs in error.

Each of the above named parties is claiming the right to, and is actually attempting to, exercise the powers of the respective offices severally claimed by them; and thus very great confusion is produced in the State of Kentucky, by reason of the doubts as to which of the persons named has the lawful right to exercise the authority pertaining to the several offices named, all to the great injury and detriment of the people of the State of Kentucky.

Thus, under the Constitution and laws of the State of Kentucky, the Governor of the State, in addition to being charged generally with the duty of seeing that the laws are faithfully executed, is also specially charged with the duty and invested with the power of filling many important offices in the State by appointment, some by original appointment and others by appointment to fill vacancies; and also with the power to issue commissions to many officers, whether appointed by him or elected by the people, and also with the power to issue pardons and to remit fines and forfeitures.

Both plaintiff in error, William S. Taylor, and defendant in error, J. C. W. Beckham, are claiming the right to perform all the functions of the aforesaid office of Governor, and each of them is attempting and has actually attempted to perform many of the said functions, such, for example, as issuing pardons and filling offices by appointment, etc.

Some of the officers of the State recognize the acts of the plaintiff in error, William S. Taylor, as the lawful acts of the Governor of the State, and refuse to recognize similar acts by defendant in error, J. C. W. Beckham; while other officers of the State recognize the acts of J. C. W. Beckham as the lawful acts of the Governor of the State, and refuse to recognize the acts of William S. Taylor as such Governor.

Among other officers whom the Governor is authorized and required to appoint are the officers of the eleemosynary institutions of the State; and each of the said two claimants to the office of Governor has attempted to fill said offices, and some persons recognize the authority of the appointees of one of said claimants to the offices and refuse to recognize those of the other, and *vice versa*. By reason of all these facts and others which might be enumerated, it is of the utmost importance to the people of the State of Kentucky that the question of the right to office involved in the aforesaid litigation should be determined.

2. The questions of law involved in said causes are of very great and very grave interest and importance, involving the nature and extent of the powers of an election Contest Tribunal, and the powers of the Judiciary with relation thereto; and we therefore unite in a further request to the Court to allow each side six hours for the argument of the said causes (they are to be heard together) and three counsel on a side.

LOUIS MCQUOWN,
Attorney for J. C. W. Beckham and others.

HELM BRUCE,
Attorney for plaintiffs in error.

Supreme Court of the United States.

WILLIAM S. TAYLOR AND
JOHN MARSHALL, ... *Plaintiffs in Error,*
vs.
J. C. W. BECKHAM, ... *Defendant in Error.*

BRIEF FOR PLAINTIFFS IN ERROR.

This case comes before the Court practically on a petition and answer. A demurrer was filed to all of the answer, except a few simple matters contained therein, as to which there is no longer any controversy, and this demurrer was sustained; thus cutting off all opportunity for proof, by admitting the allegations of the answer. There is, therefore, no controversy as to facts, as they appear from the allegations of the petition and answer.

Both the offices of Governor and Lieutenant-Governor are involved, but as most of the questions arising are exactly the same as to the two offices, we will, for simplicity and brevity, speak only of the office of Governor, except where on some point there is a difference between them; in which event we will explain it.

The Constitution of Kentucky, on the subject of the election of Governor, provides that:

> "He shall be elected for the term of four years by the "qualified voters of the State. *The person having the "highest number of votes shall be Governor.*" (Sec. 70.)

On November 7, 1899, William S. Taylor and William Goebel were rival candidates for the office of Governor. At

this time, to use the language of Judge Burnam, of the Court of Appeals of Kentucky (who delivered an opinion concurring in the judgment of that Court), it is admitted "that at the election, under the operation of the statute known as the 'Goebel Election Law,' the entire *election machinery of the State* was in the hands of the friends and partisans of the contestants (Goebel and Beckham); that all of the election officers, *from the highest to the lowest*, were selected by the State Board of Election Commissioners, or by their appointees; that the State Board of Election Commissioners were themselves fellow-partisans of contestants." The election officers here referred to included those who received the votes, those who counted them and those who made the returns.

Under these conditions William S. Taylor received 193,714 votes, and William Goebel received 191,331 votes, Taylor's majority being 2,383. And accordingly on December 9, 1899, the State Board of Election Commissioners issued to Taylor the following certificate, viz.:

"COMMONWEALTH OF KENTUCKY.

"Frankfort, Dec. 9, 1899.

"The undersigned, a Board for examining and canvassing the returns of an election held on Tuesday, the 7th day of November, 1899, for

"Governor

"of the State of Kentucky, do certify, that William S. Taylor received the highest number of votes given for that office as certified to the Secretary of State, and is therefore duly and regularly elected for the term prescribed by the Constitution.

"WILLIAM S. PRYOR, *Chairman*,
"W. T. ELLIS, *Member*,
"————————, *Member*,
"*State Board of Election Commissioners for the Commonwealth of Kentucky.*"

The foregoing facts, as to the vote and the certificate, are alleged in the answer to which the demurrer was sustained (Rec., vol. 1, pp. 16 and 17); and the vote is also shown by the certified vote of the State, by counties, introduced in evidence before the Contest Board by Goebel and Beckham (Vol. 2, p. 176.)

After receiving this certificate Taylor took the oath of office, administered by the Chief Justice of the Court of Appeals; thus becoming on the day of his inauguration the *de jure* Governor of Kentucky, with as clear a title of record as any man ever held; but subject to the possibility that in the future some contest might be inaugurated against him. Immediately upon taking the oath he entered upon the duties of the office, which he has ever since held.

Mr. Goebel having been killed, Mr. Beckham, claiming to be Lieutenant-Governor, with the right to act as Governor by reason of Mr. Goebel's death, brought this action at law, pursuant to a Kentucky statute, to recover the office of Governor. *He does not allege in his petition that Goebel was elected Governor*, but, after stating the issue of the certificate to, and the inauguration of, Taylor, he alleges that the General Assembly thereafter "*adjudged and determined*" that Goebel was elected; and that "upon the adjudication and determination aforesaid . . . . . all the powers and authority of the defendant, William S. Taylor, who had theretofore been acting as Governor of this Commonwealth, immediately ceased." (Vol. 1, p. 5.)

In other words plaintiff states that the election officers showed by their returns that Taylor was elected, and that thereupon he took the oath, and "was inducted into the office of Governor" (Vol. 1, p. 2), but that thereafter the General Assembly "adjudged and determined" that Goebel, and not Taylor, was elected. *And this action is brought to enforce the alleged "adjudication and determination."*

It is proper here to say that there is no dispute over the proposition that in such form of action in Kentucky the plaintiff must recover on the strength of his own title, and not on any weakness of defendant's. (Tilman vs. Otter, 93 Ky., 604; Leeman vs. Hinton, 1 Duvall, 42.)

Taylor, being summoned to answer this petition, pleads his election, his certificate, his inauguration, and his possession of the office, and denies that the General Assembly made any such adjudication and determination as is alleged in the petition, and says the proceeding by which the General Assembly sought to oust him from the office, and to install Goebel therein, was not due process of law, as required by the Federal Constitution.

This defense he makes, not only on behalf of himself, as the claimant of the office, but on behalf of the people of the State, who, in the exercise of their constitutional freedom and liberty, elected him. Speaking on this subject Taylor and Marshall in their joint answer say:

"Par. 3. Further answering herein defendants, W. S. Taylor and John Marshall, say each of them is over forty years of age, has been a citizen and resident of the State of Kentucky all his life, and likewise a citizen and resident of the United States all his life. They say further that, as hereinafter more specifically stated, the said Taylor was, on November 7, 1899, duly elected Governor of the State of Kentucky, and the said Marshall duly elected Lieutenant-Governor for the State of Kentucky by the qualified voters thereof; that each of them afterwards received in due form a certificate to that effect from the State Board of Election Commissioners of the Commonwealth of Kentucky, and each of them thereafter duly qualified as such officers by taking the oath of office prescribed by law therefor, and thereby each of them became charged with an express public trust for the benefit of the people of the State of Kentucky. They say that the proceedings referred to in the petition herein by

which it is alleged that the contests over the offices of Governor and Lieutenant-Governor were tried and determined, and by which it is alleged that the authority of these defendants to act respectively as Governor and Lieutenant-Governor was terminated, were and are utterly void, and of no effect for the reasons hereinafter stated, and if effect be given to them, and these defendants be thereby deprived of their respective offices of Governor and Lieutenant-Governor of Kentucky, and plaintiff, Beckham, be thereby installed in the office of Governor or Lieutenant-Governor of Kentucky, these defendants will be thereby deprived by the State of Kentucky of their property without due process of law, and both they and the people of Kentucky, and the qualified voters thereof, will be deprived of their liberty without due process of law, and will be denied the benefit of a republican form of government, all of which is contrary to the provisions of the Fourth Section of the Fourth Article of the said Constitution and to the Fourteenth Amendment to said Constitution, the benefits of which provisions are hereby specially set up and claimed by these defendants both for themselves and for the people of Kentucky, and the qualified voters thereof, whose representatives and trustees these defendants are." (Rec., vol. 1, p. 15.)

Then again, in speaking of the principle ground upon which Goebel sought to have the General Assembly give him the office, viz.: by the rejection of the entire vote in forty (out of 119) counties of the State, on the ground that the ballots, *furnished by the State*, in these counties were too thin to be legal, the defendants reiterate their appeal to the Constitution, saying:

"Defendants further say that, if the State, after having furnished to its citizens and electors in a number of its counties, official ballots upon which it required them to vote, or not vote at all, in the election of a Governor and Lieuten-

ant-Governor, shall reject their votes, and thus refuse to allow them to participate in the election of such officers, merely because they used, in voting, the ballots which the State required them to use, and if the State shall, thereby and on that account, refuse to allow the persons respectively chosen for the office of Governor and Lieutenant-Governor by the majority of the qualified voters of the State, including those using the ballots aforesaid, to take their seats and perform the duties of Governor and Lieutenant-Governor, and shall in lieu of them seat other persons, then the State will thereby deprive the said citizens and electors, all of whom are both citizens of Kentucky and citizens of the United States, of their political liberty without due process of law, in violation of the Constitution of the United States, and will thereby also deprive these defendants of their property without due process of law, all of which is contrary to the provisions of the Constitution of the United States." (Rec. 1, p. 35.)

Then again defendants repeat the appeal in the following portion of the answer, viz.:

"And defendants further say that if any such pretended meeting of members of the General Assembly was held either on January 31st, or February 2d, at which any action was taken or attempted to be taken on the reports of said contest committees, the said meetings were held secretly, without any notice to any of the Republican members of the General Assembly, and without any notice to either of these defendants that such meeting was to be held, and without any opportunity either to the said Republican members, or any of them, to be present, or any opportunity for either of these defendants to be present at such meeting, at which the said contests were to be heard and determined. And if any such meetings were held, or attempted to be held, on either of

those days, and any determination of either of said contests was pretended to have been had, it was utterly void on account of lack of notice, and opportunity to be present or to be heard, as just herein stated, as well as for the other reasons heretofore given. And to deprive these defendants, or either of them, of their offices by such action, would be to deprive them of their property without due process of law, and would be to deprive defendants and the other people of the State of Kentucky, and especially the qualified voters thereof, of their political liberty without due process of law, and to deny to them the benefits of a republican form of government. All of which is contrary to the provisions and guaranties of the Constitution of the United States, as well as that of Kentucky." (Rec. 1, p. 42.)

Then at the close of their answer, immediately preceding the prayer, defendants say:

"Defendants further say that both the offices of Governor and Lieutenant-Governor are offices created by the Constitution of Kentucky, and therefore not subject to abolition by the General Assembly of Kentucky. And, furthermore, it is provided by the Constitution of Kentucky, that 'the salaries of public officers shall not be changed during the term for which they were elected,' and defendants say they were elected, as heretofore shown, to the offices of Governor and Lieutenant-Governor, respectively, of the State of Kentucky, on November 7th, 1899, for a period of four years each, and then and thereby became entitled to exercise the functions of said offices, and to receive the salaries and emoluments appertaining thereto, which are large and valuable, and were such when they were thus elected; the salary of the Governor being then and now fixed by law at $6,500 per annum; and to take from them their said offices and their said salaries and emoluments by the aforesaid action of said contest tribunals,

would be to deprive them of their property without due process of law, contrary to the provisions of the Constitution of the United States, and especially of the Fourteenth Amendment thereof." (Rec. 1, p. 43.)

Then again in their second amended answer defendants say:

"Defendants say that the power vested in the Houses of the General Assembly of Kentucky to try contests over elections of Governor or Lieutenant-Governor is judicial in its nature, and is subject to the same limitations and restrictions to which the exercise of judicial power is ordinarily subject; that by the Constitution of the State of Kentucky and also by the Constitution of the United States, especially the Fifth and Fourteenth Amendments thereof, the exercise of absolute and arbitrary power by the State or any part thereof, whereby any person shall be deprived of life, liberty, property, or the pursuit of happiness, including therein the enjoyment of honors and the occupation of positions of public trust and emolument, is forbidden. But defendants say that if effect be given to the alleged decisions by the said Boards of Contest or the said Houses of the General Assembly as to said contested elections for Governor or Lieutenant-Governor, and these defendants be thereby deprived of the offices of Governor or Lieutenant-Governor, and the plaintiff Beckham be thereby vested with the power of Governor of Kentucky, then not only will the people of Kentucky be deprived of their political liberty without due process of law, but these defendants will also be deprived without due process of law of the right to hold the said office of Governor and Lieutenant-Governor, which are both profitable and honorable, all of which is contrary to and forbidden by both the provisions of the State Constitution and of the Constitution of the United States above referred to, and defendants say that if by a

proper construction of the Constitution of Kentucky the absolute and arbitrary power is given either to the Boards of Contest or to the Houses of the General Assembly to take from these defendants the offices of honor, trust and emolument to which they were elected by the people of the State as heretofore alleged, under the false guise of a trial of a contest over said offices, then the said Constitution of the State is itself contrary to the aforesaid provisions of the Constitution of the United States." (Rec. 1, p. 60.)

Thus it will be seen there are two separate rights, distinct from each other and yet allied, over which the pleader invokes the protection of the Federal Constitution, and which he insists are thereby protected. They are as follows:

1. The right of Taylor to hold and enjoy an office of honor and profit, into which he has been duly inducted.

2. The right of the people of the State, as an essential part of their political liberty under a republican form of government, which is guaranteed by the Federal Constitution, to choose their representatives.

   (In connection with the discussion of this right will be discussed the right of the people to speak through Taylor in invoking the protection which is thus sought.)

These two rights are specially set up in the answer, and claimed to be protected by the Federal Constitution; and it is expressly charged that the State of Kentucky, by the alleged action of its General Assembly, enforced by its highest Court, has attempted to deprive those entitled to these rights of the benefits thereof, without due process of law. We know of no court in the land, except this one, which has the power to finally settle these questions.

Speaking of the question of the character of the proceedings which resulted in the alleged "adjudication and determination" which this action was brought to enforce, and which Taylor claims were not due process of law, the allegations of the answer, *admitted to be true*, may be briefly summarized as follows, omitting many matters of detail, viz.:

1. After Taylor had been inaugurated, an agreement was made between Goebel and his managers and a large number of the members of the General Assembly, by which it was arranged and agreed, in advance of the institution of the contest, that he should make the contest, and *they would decide it for him.* An agreement between the judge and one of the litigants, in advance of the institution of the litigation, that the judgment should be in his favor. (Rec. 1, pp. 18 and 19.)

2. After the contest was inaugurated it became necessary under the law to select, by lot, two committees, one to hear the evidence and report on the Governor's contest, and one on the Lieutenant-Governor's. But, instead of selecting by lot, a *trick was resorted to*, by means of which Goebel's managers arranged in advance who the committees should be, and in this way put on the Governor's committee ten Democrats and one Republican, and on the Lieutenant-Governor's committee nine Democrats and two Republicans. (Rec. 1, pp. 24 and 25.)

3. Many of the members of these committees were men who had previously counseled with Goebel, and advised and urged him to make the contest, and were objected to on this ground before both the committees and the General Assembly itself, but still continued to sit. (Rec. 1, pp. 25 and 46.)

4. The course of the committees during their sittings was arbitrary, tyrannical and contradictory. But the details can not be stated here. One example may be given. They heard evidence in great detail as to alleged interferences with a free election in Jefferson county, where Taylor received a large majority; but sustained a demurrer to an exactly similar charge, in Taylor's counter-notice, as to Kenton county, where Goebel received a large majority; and thus cut off all evidence as to that county. (Rec. 1, p. 30.)

5. At the conclusion of the testimony the committee practically refused to hear argument, the following being the facts: The committees had set January 30th for beginning the argument, and had provided that they would sit six hours a day, and allow each side a total of ten hours. On that day, but before the beginning of the argument, Mr. Goebel was shot by an unknown assassin. Immediately the wildest excitement and most intense passion prevailed, with serious danger of mob violence. Certain of the counsel for Goebel warned the counsel for Taylor that, in their judgment, two of the counsel for Taylor (naming them) would be killed if they should appear before the committee to argue the contest. Under these circumstances counsel for Taylor addressed to the committee a communication in writing, setting forth these facts, and asking an adjournment simply to the next day, in order to allow a brief space for the allayment of passion, and consenting at the same time that the whole time thus lost should be taken out of the time allowed them (Taylor's counsel) for argument. But the committee refused the request, and said the argument must proceed that day or not at all; where-

upon counsel for Taylor declined to argue the case; and the committee proceeded immediately to adopt the brief report to which we shall presently refer. (Rec. 1, p. 32.)

To the objections urged against the committee, or Board of Contest, as it is called in the statute, the Court of Appeals in its opinion makes, among others, the following response, viz.:

"*Besides, the Board was only a preliminary agent to "take evidence and report the facts to the General As- "sembly. The Assembly itself finally determined the con- "test.*" (Vol. 1, p. 153.)

In other words, the view of the Court was that it made no difference whether the committee was partial or impartial, fair or unfair; it was really nothing but a commission to take evidence, make an orderly statement of the facts, and report to the General Assembly, where the real trial would take place. And in this connection it also says the question before the *Assembly* was one "requiring evidence for its proper determination". (P. 151.) We must accept this as the true construction of the statute, but it renders of vast importance the remaining objections to this proceeding, as set forth in the answer demurred to, and the substance of which we will now state.

6. *The committee did not return any evidence whatever to the General Assembly—not a line, not a word.* (Rec. 1, pp. 41-43.)

Its *report on the facts* is contained in the following remarkable document, viz.:

"The undersigned, the Board appointed and selected by the General Assembly to determine the con-

tested election of the office of Governor of this Commonwealth between William Goebel, contestant, and William S. Taylor, contestee, beg leave to report that we have heard all the evidence offered by both parties, and we now respectfully report to the General Assembly of the Commonwealth of Kentucky, that in our opinion, William Goebel was legally elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for anyone for the office of Governor of Kentucky at said election; and we therefore respectfully suggest that this report be approved and a resolution adopted by this joint Assembly, declaring the said William Goebel Governor-elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that the said William Goebel has received the highest number of legal votes, and is adjudged to be the person elected to said office of Governor for the term prescribed by law.

"G. W. HICKMAN, Chairman.

"Frankfort, Jan. 30, 1900."

Of what wonderful assistance that report must have been to the General Assembly, which was to try this contest! What a wealth of information it contained! "In our opinion William Goebel was legally elected Governor." "He then and there received the highest number of legal votes." A report simply drawn to come within the language of the statute (see appendix); not a word as to the facts upon which this conclusion was reached. Not a word as to how many legal votes they found Goebel to have received, or how many they found Taylor to have received; not a word as to what

the *adjudicated majority* was, whether one, or one thousand, or ten thousand, but simply a quotation from the statute, "the highest number of legal votes." Thus a majority of nearly 2,400 votes in favor of Taylor, returned by officers who were his political opponents, is wiped out by the simple statement that the opposing candidate received the highest number of legal votes, without a word of explanation in aid of the statement, or a line of testimony in support of it. Such was the action of this committee, which, according to the construction of the statute by the Court of Appeals, was really not to decide anything, but "was only a preliminary agent to *take evidence* and *report the facts* to the General Assembly."

7. What then did the General Assembly do, the Assembly, which, in the language of the Court of Appeals, "itself finally determined the contest?" How did it, how could it, determine it? *It had no evidence before it; it had not even a report as to a single fact, but merely a quotation of the language of the statute.* It simply accepted the suggestion of the report, and passed a resolution to the effect that the report "is hereby adopted and William Goebel is hereby *declared to be the Governor of the Commonwealth of Kentucky*." (Rec. Vol. 1, p. 104.)

"The said reports were not accompanied by any statement of the evidence heard by said committees or the grounds of their action or finding, and the members of the General Assembly, if they acted on said reports, acted without any knowledge of the facts as to said contests, and without considering what the facts were, and without endeavoring to form any judgment upon the merits of the said contests, and without even an opportunity to form such judgment, if they had been so disposed; but they acted,

if they acted at all, purely arbitrarily, without knowledge of the facts, and merely because they desired to see these defendants deprived of the offices aforesaid, and to see the said contestants given the said offices, pursuant to the agreement and conspiracy to that effect, which had been formed before said contests were heard or determined, as heretofore stated." (Quotation from answer, Vol. 1, p. 41.)

8. But this is not all. This meeting at which this action was taken, which, in contemplation of law was to be the only real trial of the contest, was *a secret meeting*, and one held *without any notice*, either to Taylor or to Marshall, or to *any of the Republican members of the General Assembly, who composed considerably over one-third of the whole body.* (Rec. 1, p. 42.)

9. It is further shown in the answer that in the taking of proof *before the committee* all of the ten grounds of contest set forth in the notice of contest, *except two*, were practically abandoned by the absolute and total failure to introduce any evidence to support them. The two grounds on which the fight was made are set forth in the next two paragraphs of this brief.

10. One of these grounds was as follows: The State is required by law to furnish to each voter an official ballot. He must vote on this, or not at all. The State does this through its various County Court Clerks; so there is a chance for some variation in the physical appearance or character of the ballots furnished in different counties. It was claimed in the notice of contest that in forty (out of 119) counties of the State the official ballots which the

State furnished its electors, and upon which it required them to vote, and upon which they did vote, *were not legal*, because the paper upon which they were printed was too thin to conform to the requirements of the law; and, therefore, that when the voter marked and handed back the ballot which the State had handed him, the State should have declined to receive it, should have refused to allow him to vote on it, and the entire vote of those forty counties (one-third of the State) should be rejected, and the election given to Goebel, because he received the highest number of votes in the *remaining seventy-nine counties*, after *the State, by its own wrong*, had prevented the people in forty counties from participating in the election. It was not claimed by Goebel that by this the whole election was rendered void, but that, while the people of forty counties were, by the *alleged wrong of the State*, prevented from voting, the people of the remaining seventy-nine counties should be permitted to elect him *Governor for the whole State.* We contend that if this is done then the people of the forty disfranchised counties are deprived *by the State* of that right which is the essential feature of a republican government, viz., the right to choose their own representatives.

11. The remaining ground upon which a fight was made before the committee is very similar in nature to the one just explained. It was charged in Goebel's notice of contest that "the *Governor of the Commonwealth* unlawfully called the military forces of the State into active service in said city (Louisville) and thereby intimidated many people, so that the election in the city of Louisville and county of Jefferson was not

free and equal, but was void." This again, it will be observed, was the *action of the State*, through its Governor, whereby it is claimed the electors of the great county of Jefferson, containing about one-tenth of the voting population of the State (36,140 out of 397,185) should be refused the right to participate in the election, while the remainder of the State is allowed to choose a Governor for them. Furthermore the answer showed there was no conflict in evidence on the subject of the action of the military—no evidence to weigh—and that the *simple uncontradicted fact* was, that a small number of soldiers were held in the armory on the election day, *not being at or near a single voting place while the voting was going on.*

The Court sustained a demurrer to the answer setting forth the foregoing facts, which resulted in a judgment of ouster against Taylor and Marshall, declaring them to be usurpers of the offices of Governor and Lieutenant-Governor, and adjudging Beckham to be entitled to the office of Lieutenant Governor with right to exercise the powers of Governor, on account of the death of Goebel.

Suits in equity had previously been brought by Taylor and Marshall against Beckham and against one Carter, who was claiming to be President *pro tem.* of the Senate, with right to preside, though Marshall was present; in which equity suits injunctions were prayed restraining the defendants from interfering with plaintiffs in their offices. Preliminary injunctions, however, were not asked for, and on final hearing they were, by consent, heard with the case of Beckham vs. Taylor and Marshall, which was a suit for the office. When the Court reached the conclusion that Beckham was entitled to the office, it entered the judgment of ouster heretofore mentioned, and dismissed the petitions in the injunction

suits. (The injunction suits are embraced in the small record, No. 604.)

From the judgments mentioned appeals were taken to the Court of Appeals of Kentucky, where they were affirmed; and then the writs of error from this Court were allowed.

The ground of the decision by the Court of Appeals was, in effect, that the power of the General Assembly in the decision of this contest was absolute; that it could not be made the subject of judicial inquiry; that the Court would conclusively presume that the Assembly did nothing which it ought not to have done, and that it left undone nothing which it ought to have done; in other words, that *the General Assembly can do no wrong.*

Assignment of Errors.

1. The alleged legislative judgment, as upheld and enforced by the judgment in this action, was a mere arbitrary act of the State, and deprives plaintiffs in error of their offices without due process of law; the rights to said offices being valuable rights of honor and emolument, which are protected by the Constitution of the United States, and the Court erred in enforcing such judgment.

2. The alleged legislative judgment, as upheld and enforced by the judgment herein, deprives the people of Kentucky of their right to choose their own representatives, which right is secured by the Federal Constitution in its guaranty of a republican form of government to every State; and deprives them of their political liberty without due process of law. It was arbitrary, without evidence, and without notice, and based on the State's own wrong, and the Court erred in enforcing such judgment.

ARGUMENT.

JURISDICTION.

Unless the Court shall be of opinion that all the questions presented are frivolous, and wholly without substance, as was said in Wilson vs. North Carolina, 169 U. S., 586, and in Hamblin vs. Western Land Company, 147 U. S., 531, then it seems to us the jurisdiction of this Court in the case at bar is beyond question. And it will surely be necessary to consider to some extent the questions presented before they can be pronounced frivolous.

The Revised Statutes of the United States (Sec. 709) provide that:

> "A final judgment or decree in any suit in the highest "court of a State in which a decision in the suit could be "had . . . where any title, right, privilege, or immunity "is claimed under the Constitution . . . of . . . the United "States, and the decision is against the title, right, privi- "lege or immunity specially set up or claimed by either "party under such Constitution . . . may be re-examined "and reversed or affirmed in the Supreme Court upon a "writ of error."

In the case at bar Taylor did, in the State court, claim that he had been elected to the office of Governor of the State, and it was conceded by the pleading of his opponent that he had received the certificate of election from the State Board of Election Commissioners, and had been "thereupon sworn and *inducted into the office* of Governor of the Commonwealth, on the 12th day of December, 1899." (Vol. 1, p. 2.) Thus it was not only claimed, but conceded, that from December 12, 1899, until some time thereafter, he was Governor, with, at least, a *prima facie* valid title to the

office. Beckham, however, sued for the office, claiming that Taylor had lost this right by an alleged "adjudication and determination" of the General Assembly. To this Taylor answered that this alleged action was not an "adjudication" or "determination," but a mere act of tyranny under the form of law, from which there was an utter absence of "due process of law," stating the facts on which he based this claim, and that the office which he claimed was one not subject to abolition by the General Assembly, and the salary of which was not subject to change during his term, and that this salary was fixed at $6,500 a year, together with a right to occupy the mansion as a home for himself and his family, for four years; that these rights were "both profitable and honorable," and that they are such rights as are protected by the Constitution of the United States against deprivation without due process of law. (Rec. 1, pp. 43, 47, and 61.)

Surely there could be no plainer *claim* of a right under the Constitution of the United States; and the decision of the highest State Court was certainly *against it.* It presents for decision the two questions, (1) is the right to an office, of the character here described, whether or not it be "property" according to the most limited sense of that word, such a right as is protected by the Federal Constitution against arbitrary deprivation "without due process of law?" and (2) were the alleged "adjudication and determination," plead by Beckham as the foundation of his action, "due process of law?" The "power to hear and determine" these questions is jurisdiction, and is vested expressly in this Court. Whether or not the position of plaintiff in error on these questions is correct will only be finally known when this Court shall have heard and determined them.

Again, Taylor claims that, as he was the nominee of one of the great parties of the State for the office of Governor, and received the vote of nearly 200,000 electors of the State

for this office, and was actually given the certificate of election and took the oath of office, he has become charged with an express public trust, and has a right to speak for the people of the State, and especially those who voted for him and who believe that he was elected, and who are "real parties in interest" in this controversy, and whose interests will be determined by the judgment herein, but who cannot appear in person and speak; and that he, speaking for them, has the right to call upon the United States as the guarantor of their right to vote and choose their own representatives as an essential part of their political liberty under a republican representative government. And thus speaking he claims that, by the action of the General Assembly, relied on by Beckham as the foundation of his action, the people of the State have been denied the benefit of a republican form of government, as guaranteed by the Federal Constitution, and deprived without due process of law of their political liberty, of their right to choose their own representatives.

These are claims specially set up under the Federal Constitution; and this Court has the power to hear and determine them.

In Chicago, Burlington & Quincy R. R. Co. vs. Chicago, 166 U. S., 226, this Court said:

> "If the right now asserted under the Constitution of "the United States was specifically set up or claimed by "defendant in the State Court the motion to dismiss must "be overruled."

And in Covington & Lexington Turnpike Company vs. Sanford, 164 U. S., 578, 595, where the defendant plead that its property was taken without due process of law, and where a demurrer to its answer was sustained by the State Court, as in the case at bar, this Court said:

> "Where a party specially sets up and claims a right or "privilege under the Constitution or laws of the United

"States, the question of the sufficiency of the allegations "to present that issue is not concluded by the views of the "State Court. In Mitchell vs. Clark, 110 U. S., 633, 645, "this Court said: 'The question whether a plea sets up a "sufficient defense, when the defense relied on arises "under an act of Congress, does present, and that neces- "sarily, a question of Federal law; for the question is and "must be: Does the plea state facts which under the act "of Congress constitute a good defense?' This principle "was approved in Boyd vs. Nebraska, 143 U. S., 135, 180. "We decide, however, nothing more on this hearing than "that upon the facts alleged the demurrer to the answer "should have been overruled; and upon the completion of "the pleadings—unless the plaintiffs elected to stand by "their demurrer—the parties should be allowed to make "their proofs touching the issues involved."

So in the case at bar, the question of whether or not the answer stated facts sufficient to show that the right claimed was one protected by the Federal Constitution, and that the legislative proceedings relied on by plaintiff were not "due process of law," are Federal questions for this Court to determine; and upon the merits of which we will presently speak.

In the case of Boyd vs. Nebraska, *ex. rel.* Thayer, 143 U. S., 135, referred to in the case last cited, Thayer filed an information in the Supreme Court of Nebraska against Boyd who had lately been declared elected to the office of Governor of Nebraska, and had taken the oath and assumed the office. Thayer claimed that Boyd had no right to the office because not a citizen of the United States, and therefore not eligible under the laws of Nebraska to the office of Governor of Nebraska. Boyd in his response claimed that he was a citizen of the United States and was eligible to the office. The Supreme Court of Nebraska held that he was not a citizen of the United States, and was not eligible to the

office of Governor of Nebraska, and accordingly entered a judgment of ouster against him. Thus, it will be observed, the sole ultimate question at issue was that of Boyd's *right to hold this State office of Governor*, though in coming to a conclusion on that subject it was necessary to determine whether or not he was a citizen of the United States.

The case was brought to this Court by writ of error. Mr. Justice Field delivered a most vigorous opinion in which he maintained that this Court had *no jurisdiction* of the case. He said:

"I do not think that this Court has any jurisdiction to "determine a disputed question as to the right to the gov- "ernorship of a State, however that question may be "decided by its authorities . . . . . The fact that one of "the qualifications prescribed by the State for its officers "can only be ascertained and established by considering "the provisions of a law of the United States in no respect "authorizes an interference by the general government "with the State action. Because an officer of a State must "be a citizen of the United States it does not follow that "the tribunals of the United States can alone determine "that fact, and that the decision of the State in respect to "it can be supervised and controlled by the Federal "authorities."

But this was a *dissenting* opinion. The Court in an opinion by Mr. Chief Justice Fuller, concurred in by all the Justices except Mr. Justice Field, held that the Court had jurisdiction. After stating certain conclusions reached by the Supreme Court of Nebraska on the question of citizenship, the opinion of this Court says:

"Arrival at this conclusion involved the denial of a "right or privilege under the Constitution and laws of the "United States, upon which the determination of whether

"Boyd was a citizen of the United States or not depended, "and jurisdiction to review a decision against such right "or privilege necessarily exists in this tribunal. Missouri "vs. Andriana, 138 U. S., 496. Each State has the power "to prescribe the qualifications of its officers and the man- "ner in which they shall be chosen, and the title to offices "shall be tried, whether in the judicial courts or otherwise. "But when the trial is in the courts it is 'a case,' and if a "defense is interposed under the Constitution or laws of "the United States and is overruled, then, as in any other "case decided by the highest court of the State, this Court "has jurisdiction by writ of error."

Accordingly this Court not only maintained its jurisdiction, but reached a different conclusion from the Supreme Court of Nebraska on the Federal question, and *reversed the judgment of ouster* which that Court had entered against Boyd.

So in the case at bar, Beckham, under a Kentucky statute, brings a common law action, claiming the office, and praying for a judgment of ouster against Taylor. He bases his right of action solely on an alleged "adjudication and determination" of the General Assembly to the effect that he was elected. The defendant, by way of defense, appeals to the Constitution of the United States for protection of his right to the office which he claims, into which he has theretofore been regularly inducted, and which he then holds, and also for protection of the right of the people to choose their own representatives and be presided over and represented by persons thus chosen, and them alone, all of which is expressly claimed to be secured by the Federal Constitution and to have been ruthlessly violated by this pretended "adjudication and determination" of the General Assembly.

Whether or not plaintiff in error can maintain these positions is the question for determination; but he makes the claims under the Constitution of the United States, he rests

his defense upon them; the highest court of the State rules against him on them; enters judgment of ouster against him; a writ of error from this Court is allowed; and a "suit" or "case" is presented over which the jurisdiction of this Court seems to us to be unquestionable.

We have thus far said nothing of the merits of the questions involved; we have not even alluded to the consideration of whether they are substantial or frivolous. That must, and will necessarily, be disposed of by a consideration of

The Merits of the Case.

The case naturally divides itself into four principal questions, viz.:

1st. Is the right to such an office as is here involved one that is protected by the Constitution of the United States?

2d. Is the right of the people of a State to participate in an election for a State office, and to be represented by the officer of their choice, and by no other, when such right is given by the State Constitution, a right that is secured or protected by the Constitution of the United States?

3d. If the foregoing questions be answered in the affirmative, then can this Court enforce the provisions of the Federal Constitution by declaring null and void an alleged arbitrary action of the General Assembly of Kentucky, denying those rights, when such action is sought to be judicially enforced?

4th. Was the alleged "adjudication and determination" of the General Assembly of Kentucky, as upheld and enforced in this action by the highest court of

the State, an arbitrary violation of either of those rights by the State of Kentucky?

We will discuss these questions in their order.

I.

The Right to the Office.

The office is that of Governor of Kentucky. It is an office created by the Constitution of the State, which, therefore, cannot be abolished except by constitutional amendment, and none such in this case is alleged. The appointment or election of a Governor is not subject to revocation, nor is the power to suspend or remove him at will lodged in any person or tribunal. His salary, by constitutional provision, can not be changed during the term for which he was elected, except by constitutional amendment; and none such in this case is alleged. The election involved in this case was for a term of four years; and the salary of the Governor is $6,500 per annum, in addition to which he is given the right to occupy, free of rent, the executive mansion, as a home for himself and his family during said four years.

The result of this is that when a man is elected Governor of Kentucky, and takes the oath of office, he immediately becomes entitled to receive monthly a salary at the rate of $6,500 per annum, and to the use for four years of a home for himself and his family, rights of which there is no power lawfully to deprive him, except by impeachment and conviction, or by a constitutional amendment, neither of which is alleged in the case at bar, or by the determination of a contest over his title to it.

It would certainly seem that such a right is worthy of protection, and that a contest over the title to it should only be decided by "due process of law."

It may not be "property" according to the ordinary sense of that term. It is certainly a "right" of some kind or description, and of large pecuniary value, as well as a high honor. It is true it does not, in case of death, pass to the heir or administrator; but neither does a life estate in land or personalty. It is true it can not be sold and conveyed, nor subjected to the payment of debts; but this is often true of an estate in lands, where such limitations are imposed that in case of an attempt at alienation or subjection to claims of creditors, the estate ceases and title passes to another. Neither can the franchise of a railroad corporation be assigned or transferred, except by special leave of the Legislature; yet it is universally conceded to be a right of great value, which produces income, and is assessed by the State at high values and taxed accordingly.

It may be said an officer can abandon his office at will. We are not sure that this is true—of course he can *resign*, if the State consents by accepting his resignation—but suppose it is true, so can a man abandon property; he can absolutely burn it up and destroy it; and he often holds valuable rights which he can terminate at will.

It may be said the law expressly provides for trials of contests over the right to office and makes such determinations final; but so does it expressly provide for the trial of contests over the title to land, and makes such determinations final. But in either case, we submit, the trial must be by "due process of law."

It is difficult to see what it is about the right to such an office, as is here involved, which should withdraw it from that protection against spoliation which surrounds every other right of value.

Of course an office may, by the law, be held *at the will* of some appointing power. And when this is true the appointee cannot legally complain when that will manifests itself by discharging him, any more than one, who holds an estate at

the will of another in land, can complain when his estate is terminated by such person. Such was the case of Parsons vs. United States, 167 U. S., 324, which involved the office of District Attorney of the United States. This Court decided that the office was held absolutely at the will of the President. Hence, when the President removed Parsons he had no legal ground of complaint.

Again, an office may be repealable, or the salary reducible, *at the will of the Legislature;* and wherever this is true the officeholder affected by the exercise of this power has no legal ground of complaint.

But the office in question is not of the kinds suggested. There is here no power to abolish it, no power to reduce the salary, except by constitutional amendment, which is not alleged. There is no power in any one to revoke the appointment, or to suspend or remove the officer, except by impeachment and conviction, which are not alleged. It is true, as heretofore said, that there is provision for the trial of a contest over the right to it, just as there is provision for the trial of a contest over any other valuable right. But that trial must be by "due process of law." Whether or not there was "due process of law" in the proceedings involved in this action we will consider in a later part of this brief, according to the plan of argument heretofore outlined.

That the holder of such an office as is here involved is protected by the law against arbitrary deprivation of his rights, is shown by the words of this Court uttered on more than one occasion.

In the great case of Marbury vs. Madison, 1 Cranch, 137 —great because of the great opinion therein delivered by a great lawyer, and not because of the greatness of the object of the contest—the controversy was over the right of Mr. Marbury to have delivered to him by Mr. Madison, Secretary of State, a commission as justice of the peace for the District of Columbia, which commission had been executed and

made ready for delivery by his, Madison's, predecessor, under an appointment made during a preceding administration. On the subject of the nature of Marbury's right the Court, in an opinion by Chief Justice Marshall, said:

"Mr. Marbury, then, since his commission was signed "by the President and sealed by the Secretary of State, "was appointed; and as the law creating the office gave "the officer a right to hold for five years, independent of "the executive, the appointment was not revocable, but "*vested in the officer legal rights, which are protected* "*by the laws of his country.*

"To withhold his commission, therefore, is an act "deemed by the Court not warranted by law, but violative "of a *vested legal right.*

"This brings us to the second inquiry, which is: "2d. If he has a right, and that right has been vio- "lated, do the laws of his country afford him a remedy?

"The very essence of civil liberty is the right of every "individual to claim the protection of the laws, whenever "he receives an injury. One of the first duties of govern- "ment is to afford that protection. In Great Britain the "King himself is sued in the respectful form of a petition, "and he never fails to comply with the judgment of his "court . . . . .

"The government of the United States has been "emphatically determined a government of laws and not "of men. It will certainly cease to deserve this high "appellation if the laws furnish no remedy for a "vested legal right.

"If this obloquy is to be cast on the jurisprudence of "our country it must arise from the peculiar character of "the case.

"It behooves us then to enquire whether there be in its "composition any ingredient which shall exempt it from

"legal investigation or exclude the injured party from "legal redress. In pursuing this inquiry the first question "which presents itself is, whether this can be arranged "with that class of cases which come under the description "of *damnum absque injuria;* a loss without an injury.

"This description of cases never has been considered, "and it is believed never can be considered as compre- "hending *offices of trust, of honor, or of profit.* The office "of justice of peace of District of Columbia is such an "office; it is therefore worthy of the attention and guard- "ianship of the laws . . . . . It is not therefore on "account of the worthlessness of the thing pursued that "the injured party can be alleged to be without a remedy.

"Is it in the nature of the transaction? Is the act "of delivery or withholding a commission to be consid- "ered as a mere political act, belonging to the executive "department alone, for the performance of which entire "confidence is placed by our Constitution in the supreme "executive, and for any misconduct respecting which the "injured individual has no remedy?

"That there may be such cases is not to be questioned; "but that every act of duty to be performed in any of the "great departments of government, constitutes such a case "is not to be admitted." (Pages 162 to 164.)

The Court here discusses this question and concludes as follows:

"But when the legislature proceeds to impose on that "officer other duties; when he is directed peremptorily to "perform certain acts; when the rights of individuals are "dependent on the performance of those acts, he is so far "the officer of the law; is amenable to the laws for his "conduct; and can not at his discretion *sport away the* "*vested rights of others.*

"The conclusion from this reasoning is that where the "heads of departments are the political or confidential "agents of the executive, merely to execute the will of the "President, or rather to act in cases in which the execu- "tive possesses a constitutional or legal discretion, nothing "can be more perfectly clear than that their acts are only "politically examinable. But where a specific duty is "assigned by law, and *individual rights depend upon the "performance of that duty*, it seems equally clear that the "individual who considers himself injured has a right to "resort to the laws of his country for a remedy."

The latter part of the language here quoted bears upon the subject of the third branch of our argument, viz.: the power of this Court to afford a remedy in the case at bar; but we quote the opinion now on the subject of the *nature of a public office*, where an appointment has been made for a *fixed term, with no power of discretionary revocation or discharge*. And the opinion does establish the proposition that the right to such an office is a "legal right," a "vested legal right," a vested legal right *of value*, which is protected by the law of the land, and which no officer or tribunal, whether high or low, can arbitrarily "*sport away*." And, as we shall hereafter show, since the adoption of the Fourteenth Amendment to the Federal Constitution, whereby any State acting by any of its officers, whether executive, legislative or judicial, is forbidden to deprive any person of life, liberty or property, this Court, when a suit is brought to convert such "sport" into a dread reality, can say, "It shall not be done."

In Kennard vs. Louisiana, 92 U. S., 480, involving the office of Justice of the Supreme Court of Louisiana, Chief Justice Waite thus states the question in the case, viz.:

"The *sole question presented* for our consideration in "this case, as stated by the counsel for the plaintiff in

"error, is, whether the State of Louisiana, acting under the "statute of January 15, 1873, through her judiciary *has de-* "*prived Kennard of his office without due process of law.*"

No doubt was suggested by the Court of the proposition that the right to the office was within the constitutional protection; and the sole question discussed was as to whether there had been due process of law in the proceeding by which the plaintiff in error had been deprived of his office. On this latter question certain language was used, the effect of which has been modified by later decisions.

In Foster vs. Kansas, 112 U. S., the sole question was the right of Foster to the office of County Attorney of Saline county, Kansas. He claimed he had been removed without due process of law. The Court expressed no doubt of the proposition that the right to the office was protected by the Constitution; though it affirmed the judgment on the authority of Kennard vs. Louisiana, *supra.*

In Cummings vs. Missouri, 4 Wall, 277, this Court said:

"The theory upon which our political institutions rest "is, that all men have certain inalienable rights—that "among these are life, liberty and pursuit of happiness; "and that in the pursuit of happiness all avocations, all "honors, all positions are alike open to every one and that "in the protection of those rights all are equal before the "law. Any deprivation or suspension of any of these "rights for past conduct is punishment, and can be in no "otherwise defined." (Page 321.)

Surely if deprivation of an honorable and lucrative position is punishment when done for past misconduct, it is such a loss as cannot be inflicted without due process of law when there is no charge of past misconduct.

Again in Dent vs. West Virginia, 129 U. S., 114, this Court said:

"It is undoubtedly the right of every citizen of the "United States to follow any lawful calling, business or "profession he may choose, subject only to such restric- "tions as are imposed upon all persons of like age, sex and "condition. This right may in many respects be consid- "ered as a distinguishing feature of our republican insti- "tutions. All may be pursued as sources of livelihood, "some requiring years of study and great learning for "their successful prosecution. The interest, or, as it is "sometimes termed, the estate acquired in them, that is, "the right to continue their prosecution, is often of great "value to the possessors and *cannot be arbitrarily taken* "*from them, any more than their real or personal property* "*can be thus taken from them.*"

It is true the Court was not speaking here strictly of an office, but it was speaking of a very kindred subject, viz., the right in general to follow chosen vocations, and while this is not strictly "property" according to the usual signification of that term, the Court recognizes it as a *right of value*, which can no more be arbitrarily taken away than can technical property.

Wilson vs. North Carolina, 169 U. S., 586, will doubtless be cited as authority against us in the case at bar, but it has no application to any question now before the Court. Under a statute of North Carolina providing for a Railroad Commission, it was provided that in the event of a Commissioner becoming disqualified to act the Governor might *suspend* him from office and report that fact, with his reasons, to the next General Assembly, and that the General Assembly should then determine the question of his removal; and that in the event that body determined not to remove him, he should be entitled to his salary during the suspension.

The Governor exercised this power in the case of Wilson, and *suspended* him. He refused to vacate the office, and

proceedings were instituted to oust him. He claimed he had been deprived of his property without due process of law, because the Governor would not disclose the evidence against him. The Court did not question the proposition that the right to an office is protected by the constitutional provision referred to; but it simply showed that here was a statute (which was in force when the office was accepted) which provided for removal for cause by the General Assembly, but, for reasons of manifest public policy, gave the Governor the absolute power to *suspend* the officer believed to have become disqualified, *until that question could be determined*. The statute was manifestly a valid, wise, and reasonable one; Wilson had accepted the office with knowledge of its provisions; the Governor's action was clearly within its terms; and it was so absolutely plain that there was here no deprivation of any right without due process of law, that this Court said there was not even "fair color" for the claim of spoliation.

But in the case at bar there was no mere suspension from office, but an attempt at absolute and final deprivation. And no one here claims that the General Assembly was given the right by the Constitution arbitrarily to remove one man from the office of Governor, and put another one in. It is conceded that the only power vested in that body was to *try a contest over the right to the office;* and the only question of difference between us is as to whether or not the action of the General Assembly in this regard is absolutely *immune from judicial inquiry*, so that it can say: "Anything we do is due process of law." Defendants in error assert the affirmative on this question, and plaintiffs in error the negative.

Again the case of *ex parte* Sawyer is referred to on the question of the nature of the right to office. But that case simply holds that a *court of equity* of the United States can not interfere in the matter of the appointment or removal of public officers, as this is purely a matter of legal cognizance.

There is no suggestion that the right to an office is not protected against arbitrary deprivation by the Federal Constitution. On the contrary there is a very clear intimation, if not an express statement, to the contrary. The Court says:

> "If the ordinances and proceedings of the City Council "are in the nature of civil as distinguished from criminal "proceedings, the only possible ground, therefore, for the "interposition of the courts of the United States in any "form is that Parsons, if removed from the office of police "judge, will be deprived by the State of life, liberty or "property without due process of law in violation of the "Fourteenth Amendment to the Constitution, or that the "State has denied him the equal protection of the laws, "secured by that amendment." (Page 219.)

Then, after showing that courts of equity can not interfere with the matter of appointing or removing officers, the Court says:

> "The reasons which preclude a court of equity from "interfering with the appointment or removal of public "officers of the government, from which the court derives "its authority, apply with increased force when the court "is a court of the United States and the officers in question are officers of a State. If a person claiming to be "such an officer is, by the judgment of a court of the State, "either in appellate proceedings or upon a *mandamus* or "*quo warranto*, denied any right secured to him by the "Constitution of the United States, *he can obtain relief by "a writ of error from this Court.*" (Page 220.)

We, therefore, respectfully submit, in conclusion upon this point, both on principle and authority, that the right to an office of the character now under consideration, is a right which is secured by the Constitution of the United States

and can not be taken away by the State, acting through any of its departments, except by "due process of law."

II.

The Right of Suffrage.

But there is another aspect of this case, another standpoint of view. Great as is the personal interest of Taylor, the interest of the people, the electors, the voters of Kentucky, in the outcome, is vastly greater. For Taylor personally there is involved the right to an office of honor and emolument for four years. For the people there is involved the principle, not for a day, nor a year, but forever, of their right to choose their representatives and to have those thus chosen, and no others, represent them in executive, legislative or judicial capacities.

A public office is a public trust, and the people are the *cestuis que trustent.* In this contest they are therefore real parties in interest, not *in propriis personis*, but as represented by the nominal parties. They have a deep interest in who shall represent them as their chief magistrate; a deep interest, not theoretical only, but practical, in the question of whether the man chosen by the greatest number of the voters or some other man shall represent them as Governor; a deep interest in the question of whether all the qualified voters of the State, admittedly qualified according to the terms of the State Constitution, or only a favored portion thereof, shall be allowed to choose a Governor for the whole State.

These questions of deep practical interest to the people of Kentucky will be adjudged and determined in this case. If Taylor is put out and Beckham put in, by this judgment, there will be no way for the people thereafter to

relitigate the question as to who is their Governor. Therefore they have a right to be heard here and now in defense of the rights they claim, and to have the case considered from the standpoint of their rights to be here settled before the final judgment is entered. "Wherever one is assailed in his person or his property," or, we may add, in any right which is the subject of judicial protection, "there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a Court pronounced against a party without hearing him or giving him an opportunity to be heard is not a judicial determination of his rights and is not entitled to respect in any other tribunal." (Windsor vs. McVeigh, 93 U. S., 274, 277.) Therefore as the people of Kentucky have a vastly important interest in this litigation, which will be settled by the judgment herein, they have a right to be heard as to that interest, and to have it considered by the Court and protected by the judgment it shall enter. This interest is specially pleaded and the protection of the Constitution of the United States specially invoked for it by the defendants, Taylor and Marshall, in their answer in this cause, recognizing, as they do and as they expressly allege, that they are representatives or trustees, though having also, as is often the case, a personal interest in maintaining their own positions. (Rec. 1, pp. 15, 35, 43 and 61.)

Neither the government of the United States nor that of Kentucky is a democratic government, that is, one where all the people meet and take action, but each is a republican, viz., a representative government, where all the people act, but through representatives chosen by them. It is therefore of the very essence of such a government that these representatives be chosen *by the people.* Otherwise it is not a government by the people at all, neither a democratic nor a republican government, but an oligarchy.

Now it is claimed in the case at bar that the pretended "adjudication and determination" of the General Assembly of Kentucky, to the effect that Goeble received the highest number of votes and was elected Governor, and which the Court is now asked to enforce, was not in truth an adjudication at all, but, to use the language of this Court in speaking of a certain pretended decree was "a mere arbitrary edict, clothed in the form of a judicial sentence." (Windsor vs. McVeigh, *supra*); and that if it is enforced, one chosen by the people for their representative as Governor will be displaced, and one not thus chosen will be installed to represent them in violation of rights secured to them by the Constitution of the United States.

It is said the Constitution of the United States affords no protection to the rights here involved, viz., the right of the people to choose their representatives in State affairs. But we assert, and we believe we can maintain, that it does, and that it is the sacred duty of this Court, when a suit comes before it, in which the right to that protection is specially set up and claimed, to see that the claim is allowed.

There are two provisions of the Constitution which bear upon this question, and which supplement each other. They are Section 4 of Article 4 of the original Constitution, and the 14th Amendment; being the two provisions specially and expressly relied upon in the answer herein. (Rec. 1, p. 15.) They are respectively as follows, viz.:

"The United States shall guarantee to every State in "the Union a republican form of government, and shall "protect each of them against invasion, and on applica- "tion of the Legislature, or of the Executive (when the "Legislature cannot be convened) against domestic vio- "lence." (Art. 4, Sec. 4.)

"No State shall make or enforce any law which shall "abridge the privileges or immunities of the citizens of the

"United States, nor shall any State deprive any person of "life, liberty or property, without due process of law; nor "deny to any person within its jurisdiction the equal pro- "tection of the laws." (14th Amendment.)

Let us first consider Article 4, Section 4, above quoted.

There are two distinct ideas in this section, which are the complements of each other, and either of which without the other would be probably destructive either of liberty or of law. One is a distinct promise to the people of a State, viz., the guaranty of a republican form of government, and the other is a distinct promise to the government of the State, viz., to aid it in repelling violent uprisings of the people. And, as just said, these two promises must be maintained together, for the maintenance of one and the neglect of the other would be destructive, in the one case, of liberty, and in the other, of law. Hence their close association in the Constitution. Hence Alexander Hamilton, in the Federalist, number 21, in speaking of the lack of any guaranty by the old Confederacy to the States, in the Articles of Confederation, and of the necessity of such a guaranty, says:

"A guaranty by the National authority would be as "much directed against the usurpation of rulers, as against "the ferments and outrages of faction and sedition in the "community."

If Kentucky were not a member of the American Union, if she were an absolutely independent State, her people would have the right, if oppressed or tyrannized by those in high places, to rise in their might and by force and arms eject them. But when the State entered the Union this right was given up, or, at least, its effective exercise was rendered impossible; for should the people of the State attempt by force to correct or punish that which they might consider abuses of power by the constituted authorities of the State,

the whole power of the Union would be called into play against them, under the promise of protection to the State "against domestic violence."

This right of revolution, peaceable if possible, but forcible if necessary, has always been considered of inestimable value to every liberty-loving people; and it is absolutely essential to the preservation of liberty, unless, in case of the surrender of the right, *some equally or more effective guaranty of the maintenance of that liberty is received in return.*

Did the people of the States receive any such guaranty when they surrendered their right of forcible revolution in State affairs? They did; and this was contained in the first clause of the section above quoted, viz.:

> "The United States shall guarantee to every State in "this Union a republican form of government."

That this is a promise to the *people* of a State, as distinguished from the *government* of the State, is stated by this Court in Texas vs. White, 7 Wall., 700-721; and it is the return, the equivalent, for their surrender of the right of forcible revolution as a protection of their liberty.

What is meant by a republican form of government, which is here guaranteed? There are many varieties of republican government. But there is one thing which is absolutely essential to it, a *sine qua non*, and that is the *right of the people to choose their representatives*, by which we mean their public officers in the several departments of of State. It is the exercise of that right which makes it a representative government *by the people.* Nullify that feature, in theory or practice, and, whatever else may remain, *republicanism is dead.*

This exact idea is briefly but forcibly stated by this Court in its opinion by Mr. Chief Justice Fuller in Duncan vs. McCall, 139 U. S., 449-461, as follows, viz.:

> "By the Constitution a republican form of govern-"ment is guaranteed to every State in the Union, and *the*

"*distinguishing feature of that form is the right of the* "*people to choose their own officers for governmental ad-* "*ministration*, and pass their own laws in virtue of the "legislative power reposed in representative bodies, whose "legitimate acts may be said to be those of the people "themselves."

We may, therefore, accept as certainly true that *the right of the people to choose their officers* who should represent them in State affairs, was the *essential right which was guaranteed by this clause of the Federal Constitution*, in exchange, and as an equivalent, for their surrender of the right of revolution.

It, therefore, manifestly can not be, and is not true, that the Constitution of the United States affords no protection to the right of the people of the several States to vote in State elections and thereby choose their representatives. It expressly guarantees this right.

But it may be suggested that the United States only guarantees to the people of the State a republican *form* of government; not that they shall actually have republicanism; not that they shall really and actually be allowed to choose their own representatives; not that they shall actually have liberty and freedom from "the usurpations of rulers"; but merely that they shall have *parchment liberty*, *freedom on paper;* and that if rulers do usurp powers not given them by this parchment or paper, and do oppress the people, the United States will put down the people in case they rise with force against this tyranny, but can give them no relief for their wrongs, because they have a republican *form* of government.

Was this guaranty of form all that the people received in exchange for their surrender of the right of forcible resistance to despotism? What they gave up was substantial—it was the right of "the strong man" to protect his own. "Or

else how can one enter into a strong man's house and spoil his goods, except he first bind the strong man? And then he will spoil his house." The "strong man" in Kentucky has permitted himself to be bound by the bonds of the Federal Constitution, but he did it under the solemn promise, the guaranty, that no one would be permitted to "spoil his house."

Did our forefathers, fresh from a struggle with tyranny, and learned in the lessons of history, as their writings show, indulge the vain delusion that the mere "form of law" would preserve liberty and benumb the hand of despotism? Had they forgotten that the tyrant may use the form of law as an engine of oppression; that Satan may wear Heaven's livery. We know that James Madison was not thus oblivious to the truth, for, writing in the Federalist in the effort to secure the adoption of the Federal Constitution, he says:

> "Will it be sufficient to mark with precision the "boundaries of these departments in the Constitution of "the government, and to trust to these *parchment barriers* "against the encroaching spirit of power? This is the "security which appears to have been principally relied on "by the compilers of most of the American Constitutions. "*But experience assures us that the efficacy of the provision* "*has been greatly overrated.*"

And so Mr. Justice Story, in an address on the science of government, says it is one of the commonest errors as to government "that, when once erected on correct principles, it will stand without assistance. 'By its own weight made steadfast and immovable.' This is the besetting delusion (I had almost said the besetting sin) in all popular governments." (Story's Miscellaneous Writings, p. 619.)

But it is needless to say more on this subject; the men who framed the Federal Constitution were men of eminently

practical wisdom; they knew that "parchment barriers" against oppression were not sufficient; and when they, and the people who ratified and adopted the Constitution, surrendered the right of self-protection against tyranny in the States, they did so with the understanding that an *effective* protection by the Union was secured to them in return; and that the United States guaranteed to the people of every State the right to choose their representatives, a guaranty which would be practically effective if the right should be violated.

We repeat therefore that this is a right which is protected by the Federal Constitution, by a guaranty which is companion to the promise of assistance to the *government* of the State in resisting domestic violence.

The use of the word "guarantee" in this connection is well worthy of consideration in determining the exact relation of the parties in interest. It is a word of well defined meaning, one well understood by the great lawyers who sat in the convention which framed the Federal Constitution, and it expresses with peculiar fitness the exact obligation intended. "A guaranty is a promise to answer for the payment of some debt, or *the performance of some duty, in the case of the failure of another person who is himself in the first instance liable to such payment or performance.*" (14 Am. and Eng. Ency. of Law, p. 1128—2d Edition.) So the United States does not in the first instance give to the people of the States the right to choose their representatives; but it *guarantees* it. The primary obligation is on the State to see that the people are allowed the opportunity to choose their representatives; but should the State default on this obligation, should it fail in the performance of this duty, the United States *guarantees* it.

As to the right and power of this Court to render effectual this guaranty in the case at bar, we will speak in a later part of our argument. We confine ourselves for the present to the existence of the right and of the obligation to protect it.

Thus far we have spoken only of the fourth section of the Fourth Article of the Constitution. But the Fourteenth Amendment gives additional and broader power to the Federal government, and enables it to check arbitrary oppression by a State whenever and wherever and by whatever agency or department it may attempt it. It provides that "No State shall . . . deprive any person of life, liberty or property without due process of law."

We submit that the right of the people to vote, their right to choose their own representatives as a part of their political "liberty," is protected by this provision. We do not mean that it guarantees universal suffrage; we will explain later exactly what we mean in this regard. We submit that this amendment is a constitutional protection to the individual, and *every right he has*, against *arbitrary spoliation by a State.*

In Bank vs. Okely, 4 Wheat., 244, this Court, in speaking of the requirements of due process of law, said:

"They were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." (Strongly approved in Hurtado vs. California, 110 U. S., 527.)

In speaking of a limited use made of the words "life, liberty and property" as used by counsel, this Court, in Cummings vs. Missouri, 4 Wall., 277, said:

"The learned counsel does not use these terms—life, "liberty and property—as comprehending every right "known to the law. He does not include under property "those estates which one may require in professions, "though they are often the source of the highest emolu- "ments and honors. The deprivation of any rights, civil

"or political, previously enjoyed, may be punishment; "the circumstances attending and the causes of the "deprivation determining this fact." (Page 320.)

In the Slaughter-House Cases, 16 Wall., 36, in speaking of the meaning of these terms, as used in the Fourteenth Amendment, Mr. Justice Swayne, said:

"Life, liberty and property are forbidden to be taken "without due process of law. Life is the gift of God, and "the right to preserve it is the most sacred of the rights of "man. Liberty is freedom from all restraints except such "as are justly imposed by law. Beyond that line lies the "domain of usurpation and tyranny." (Page 127.)

In People vs. Marx, 99 N. Y., 386, the Court of Appeals of New York said:

"The term 'liberty,' as protected by the Constitution, "is not cramped into a mere freedom from physical "restraint of the person of the citizen, as by incarceration, "but is deemed to embrace the right of man to be free in "the enjoyment of the faculties with which he has been "endowed by the Creator, subject only to such restraints "as are necessary for the common welfare." (Page 386.)

In Brown vs. Hummel, 6 Pa. St., 86, the Supreme Court of Pennsylvania said:

"But the most important of all our franchises—the "right of an elector and citizen—can not in a confined "sense be called property. It is not assets to pay debts; "nor does it descend to the heir or administrator. But "who does not feel its value; and who but would turn "pale, if he thought he could be deprived of it, without "hearing or trial, by an act of assembly." (Page 93.)

In People vs. Hurlbut, 24 Mich., 44 (9 Am. Rep., 103), the Supreme Court of Michigan, through Judge Cooley, thus speaks of what is meant by constitutional freedom:

"*What is constitutional freedom?* Has the administration of equal laws *by magistrates freely chosen* no necessary place in it? Constitutional freedom certainly does not consist in exemption from governmental interference in the citizen's private affairs; in his being unmolested in his family, suffered to buy, sell and enjoy property, and generally to seek happiness in his own way. All this might be permitted by the most arbitrary ruler, even though he allowed his subjects no degree of political liberty. The government of an oligarchy may be as just, as regardful of private rights, and as little burdensome as any other; but if it were sought to establish such a government over our cities by law it would hardly do to call upon a protesting people to show where, in the Constitution, the power to establish it was prohibited; it would be necessary, on the other hand, to point out to them where and by what unguarded words the power had been conferred. *Some things are too plain to be written* . . . . .

Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; *it consists in the civil and political rights which are absolutely guaranteed, assured and guarded;* in one's liberties as a man and a citizen—*his right to vote, his right to hold office*, his right to worship God according to the dictates of his own conscience, his equality with all others who are his fellow citizens; all these guarded and protected and *not held at the mercy and discretion of any one man or of any popular majority.* (Story, Miscellaneous Writings, 620.) If these are not now the absolute right of the people of Michigan, they may be allowed more

"When we consider the nature and the theory of our "institutions of government, the principles upon which "they are supposed to rest, and review the history of their "development, we are constrained to conclude that they do "not mean to leave room for the play and action of purely "personal and arbitrary power. Sovereignty itself is, of "course, not subject to law, for it is the author and source "of law; but in our system, while sovereign powers are "delegated to the agencies of government sovereignty "itself remains with the people, by whom and for whom "all government exists and acts. And the law is the defi- "nition and limitation of power. It is, indeed, quite true "that there must always be lodged somewhere, and in some "person or body, the authority of final decision; and in "many cases of mere administration the responsibility is "purely political, no appeal laying except to the ultimate "tribunal of the public judgment, exercised either in the "pressure of opinion or by means of the suffrage. But "the fundamental rights to life, liberty and the pursuit of "happiness, considered as individual possessions, are "secured by those maxims of constitutional law which are "the monuments showing the victorious progress of the race "in securing to men the blessings of civilization under the "reign of just and equal laws, so that, in the famous lan- "guage of the Massachusetts Bill of Rights, the govern- "ment of the Commonwealth 'may be a government of "laws and not of men.' For, the very idea that one man "may be compelled to hold his life, or the means of living, "or any material right essential to the enjoyment of life, "at the mere will of another, seems to be intolerable in "any country where freedom prevails, as being the essence "of slavery itself.

"There are many illustrations that might be given of "this truth, which would make manifest that it was self- "evident in the light of our system of jurisprudence. *The "case of the political franchise of voting is one.* Though not "regarded strictly as a natural right, but as a privilege "merely conceded by society according to its will, under "certain conditions, nevertheless, *it is regarded as a funda- "mental political right, because preservative of all rights.*"
(Yick Wo vs. Hopkins, 118 U. S., 369.)

"liberty of action and more privileges, but they are little "nearer to constitutional freedom than Europe was when "an imperial city sent out consuls to govern it" . . . (Page 106, etc.)

We have cited this last case, being an opinion by Judge Cooley, and including in it a reference to the views of Mr. Justice Story, to show that our constitutional freedom, our constitutional "liberty," that is our "liberty" as secured by the Constitution, includes the right to vote, and we have cited other cases to show the broad meaning given to the words "life, liberty and property" by this Court; and we think we have shown that the Fourteenth Amendment, using these terms, as it does, is a prohibition against the exercise of *arbitrary power by a State* in despoiling a person of *any right he has.*

Now, coming to the immediate question of the protection by this Fourteenth Amendment of the right to vote in State elections, we find this Court has expressly said that the right to vote, if given by the State law, is protected by this amendment to the Federal Constitution, against arbitrary deprivation by the State.

In Minor vs. Happersett, 21 Wall., 162, this Court showed with great clearness that the Fourteenth Amendment did not confer any right to vote, and did not create universal suffrage, but said the Court:

> "*The right of suffrage, when granted, will be protected.* "*He who has it can only be deprived of it by due process of* "*law, but in order to claim protection, he must first show* "*that he has the right.*" (page 176.)

We believe we have established in the foregoing pages that the Constitution of the United States, both by the provision guaranteeing to the people of the States a republican form of government, the essential feature of which is the

right of the people to choose their representatives in the various departments of government, and by the Fourteenth Amendment prohibiting any State from depriving any person of life, liberty or property without due process of law, has protected and guaranteed the right of the people of every State to vote, against the arbitrary action of any department of the government of the State in attempting to deprive them of this right. Of course we do not contend that the Federal Constitution requires universal suffrage in the States. That never has existed in any State. The people may meet in a sovereignty convention, and by the adoption of a constitution, limit the right of suffrage, and provide how it shall be exercised, whether by a direct vote by the people in every instance, or by first electing representatives and then having these representatives elect or appoint some other representative, as is done in the case of the election of a President by the electoral college, or an election of a United States Senator by the General Assembly, or in the case of the appointment of judges by the Executive. But what we do maintain is that, when the people, by their Constitution, have fixed the right of suffrage, and have provided for a direct vote by those upon whom the right of suffrage is conferred, then they *must be allowed to vote*, and thus to choose their representatives; and that any arbitrary deprivation of this right by the State, through any department or agency of the State, whether executive, legislative or judicial, is forbidden by the Federal Constitution.

III.

The Power of This Court to Give Relief.

At every point at which we assailed the alleged "judgment" of the General Assembly we were met in the State Court with the proposition, practically and substantially, that

this was an action taken by the General Assembly, and that the Court had no power to inquire into it; that the Court would conclusively presume that all was done which ought to have been done, and nothing done which ought not to have been done; or, in other words, that the General Assembly can do no wrong, because there is no power in the State that can inquire into it and say that it is wrong.

To give some idea of the views maintained by the Court of Appeals of Kentucky, we give a brief extract from the opinion of Judge Burnam, who concurred in the judgment. After stating that it was alleged in the answer, and admitted by the demurrer, that the alleged "judgment" was made pursuant to an agreement to that effect entered into between Goebel and the members of the General Assembly prior to the institution of the contest; and that the General Assembly did not have a particle of testimony before it, and was wholly ignorant of the facts, when it pretended to make the determination wiping out the majority shown by the returns; and that it made this pretended adjudication at a secret meeting, not only without notice to either Taylor or Marshall, but without notice to at least one-third of the members of the General Assembly itself, and without opportunity to any of them to be present, the Judge then proceeds:

"It is hard to imagine a more flagrant and partisan "disregard of the modes of procedure which should "govern a judicial tribunal in the determination of a great "and important issue than is made manifest by the facts "alleged and relied on by the contestees, and admitted by "the demurrer filed in this action to be true, and I am "firmly convinced, both from these admitted facts and "from knowledge of the current history of these transac-"tions, that the General Assembly, in the heat of anger, "engendered by the intense partisan excitement which was "at that time prevailing, have done two faithful, conscien-

"tious and able public servants an irreparable injury in "depriving them of the offices to which they were elected "by the people of this Commonwealth, and a still greater "wrong has been done a large majority of the electors of "this Commonwealth, who voted under difficult circum- "stances to elect these gentlemen to act as their servants "in the discharge of the duties of these great offices." (Rec. 1, p. 156.)

Yet the Court held, Judge Burnam concurring, that on account of the division of the powers of government, the judiciary was absolutely powerless to give any relief.

Is this Court equally impotent if it shall appear that this alleged "adjudication," whether legislative or judicial, was made in violation of rights guaranteed and protected by the Constitution of the United States? We maintain, on the authority of the precedents of an hundred years, and on essential principles that must be true, that no such impotency exists; and that there is no such division of powers between *this Court* and the General Assembly of Kentucky as to prohibit this Court, when it is claimed that the proceedings of the General Assembly were violative of rights secured by the Federal Constitution, from examining into them, and *refusing to enforce them*, if found to be so.

We again ask the Court to remember how the questions arise in the case before the Court.

The plaintiff Beckham, as the successor of Goebel, sues Taylor for the office. He does not allege in his petition that Goebel was elected Governor, but he alleges that the General Assembly "adjudged and determined" that he was thus elected. The defendant Taylor alleges his election, his receipt of the certificate of election in evidence thereof, his induction into the office and continued possession thereof; and he attacks this alleged legislative adjudication as void, on the ground that it was the mere "arbitrary exercise of the

powers of government, unrestrained by the established principles of private right and distributive justice" (Bank vs. Okely, 4 Wheat., 235-244); that it was not "due process of law," thas it was a mere attempt of a few men, arbitrarily to *appoint a Governor* of their choice for the State of Kentucky, and that, if the proceeding be upheld and enforced by the Court, it will thereby deprive the people of Kentucky of their right to choose their own Governor, a right guaranteed to them by the Federal Constitution; and that therefore the Court should uphold the integrity of the Constitution and *refuse to enforce* this arbitrary edict which plaintiff asks it to enforce.

In Hurtado vs. California, 110 U. S., 516, 536, is the following striking language:

> "The limitations imposed by our constitutional law "upon the action of the government, both State and "National, are essential to the preservation of public and "private rights, notwithstanding the representative charac- "ter of our political institutions. *The enforcement of* "*these limitations by judicial process is the device of self-* "*governing communities* to protect the rights of individuals "and minorities, as well against the power of numbers, as "against *the violence of public agents transcending the* "*limits of lawful authority, even when acting in the name* "*and wielding the force of the government.*"

Mr. Justice Story, in his address on the science of government, heretofore alluded to, after showing that "the great objects of all free governments . . . . are the protection and preservation of the personal rights, the private property, and the public liberties of the whole people," and that among the "public liberties" of the man and citizen are "his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience," and that

these are of no value if left to "the mercy of the neighboring demagogue or the popular idol of the day," then says:

> "How, then, are these rights to be established and pre-
> "served? The answer is, by constitutions of government
> "wisely framed and vigilantly enforced; by laws and
> "institutions deliberately examined and steadily admin-
> "istered; *by tribunals of justice* above fear and beyond
> "reproach, whose duty it shall be to protect the weak
> "against the strong, to guard the unwary against the
> "cunning, and to *punish the insolence of office, and the*
> "*spirit of encroachment and wanton injury.*" (Story's Miscellaneous Writings, 619, 621.)

In the eightieth number of the Federalist Alexander Hamilton, after saying that it does not admit of controversy that the judicial power of the Union ought to apply, "1st, to all those (cases) which arise out of the laws of the United States," then says:

> "The first point depends upon this obvious considera-
> "tion, that *there ought always to be a constitutional method*
> "*of giving efficacy to constitutional provisions.* What, for
> "instance, would avail restrictions on the authority of
> "State legislatures without some constitutional mode of
> "enforcing the observance of them? . . . No man of sense
> "will believe that such prohibition would be scrupulously
> "regarded without some effectual power in the government
> "to restrain or correct the infractions of them. This
> "power must either be a direct negative on the State laws
> "or an authority in the Federal courts to overrule such as
> "might be in manifest contravention of the articles of
> "Union. There is no third course that I can imagine.
> "The latter appears to have been thought by the conven-
> "tion preferable to the former, and I presume will be most
> "agreeable to the States." (The power to declare a State

STATUTE unconstitutional is here given merely as an *illustration* of the general power of enforcing the Constitution.)

And again in the sixteenth number of the Federalist the same writer, in speaking of the National government, says:

"It must carry its agency to the persons of the citi-
"zens. It must stand in need of no intermediate legisla-
"tions, but must itself be empowered to employ the arm
"of the ordinary magistrate to execute its own resolutions.
"*The majesty of the National authority must be manifested*
"*through the medium of the courts of justice.*"

In like manner this Court has frequently exhibited its power to investigate the acts of both the legislative and executive departments of the National government, and, as we shall presently see, also of the State governments, and to declare them of no effect where they arbitrarily destroyed private rights.

In the case of Kilbourn vs. Thompson, 103 U. S., 168, Kilbourn had been arrested and imprisoned under an order of the lower House of Congress for an alleged contempt in refusing to answer certain questions put to him by a committee of investigation. He sued the Sergeant-at-Arms for false arrest, and thus arose the question of the validity of the order of commitment, and the question as to whether or not he had been deprived of his liberty by due process of law. Speaking of this phrase, due process of law, the Court said:

"It has been repeatedly decided by this Court, and by
"others of the highest authority, that this means a trial
"in which the rights of the parties shall be decided by a
"tribunal appointed by law, *which tribunal is to be gov-*
"*erned by rules of law previously established.*" (Page 182.)

And again, the Court stated its emphatic concurrence in the following language of the Supreme Court of Massachusetts, to-wit:

"The House of Representatives is not the final judge "of its own power and privileges *in cases in which the* "*rights and liberties of the subject are concerned*, but the "legality of its action may be examined and determined "by this Court. That House is not the Legislature, but "only a part of it, and is, therefore, subject in its action to "the laws, in common with all other bodies, officers and "tribunals within the Commonwealth. *Especially is it* "*competent and proper for this Court to consider whether* "*its proceedings are in conformity with the Constitution and* "*laws*, because living under a written Constitution, no "branch or department of the government is supreme; and "*it is the province and duty of the judicial department to* "*determine, in cases regularly brought before them, whether* "*the powers of any branch of government*, and even those "of the Legislature in the enactment of laws, *have been* "*exercised in conformity to the Constitution, and if they* "*have not, to treat their acts as null and void.*" (Page 199.)

In the case of United States vs. Lee, 106 U. S., 196, General Custis Lee had sued to recover his ancestral home of "Arlington," just after the close of the late civil war. It was in the possession of two men who were officers of the United States government, and who claimed to hold it as such for the purposes of a public cemetery, etc. When the suit was brought for the recovery of the property the case was removed to the Federal Court, and the suggestion was made by the Attorney-General of the United States that this property was held by the United States, through its officers and agents, it having been taken possession of BY ORDER OF THE PRESIDENT. And it was insisted that this should be an

end of the inquiry. The language of the Court, by Mr. Justice Miller, is instructive as defining the rights of citizens, and the limitations upon the powers of government. It says:

"No man in this country is so high that he is above "the law. No officer of the law may set that law at defi- "ance with impunity. All the officers of the government, "from the highest to the lowest, are creatures of the law, "and are bound to obey it.

"It is the only supreme power in our system of gov- "ernment, and every man who, by accepting office, partici- "pates in its functions is only the more strongly bound to "submit to that supremacy, and to observe the limitations "which it imposes upon the exercise of the authority "which it gives.

"Courts of justice are established, not only to decide "upon the controverted rights of the citizens as against "each other, but also upon rights in controversy between "them and the government; and the docket of this Court "is crowded with controversies of the latter class.

"Shall it be said in the face of all this, and of the "acknowledged right of the judiciary to decide, in proper "cases, statutes which have been passed by both branches "of Congress and approved by the President to be uncon- "stitutional, that the courts can not give a remedy when "the citizen has been deprived of his property by force, "his estate seized and converted to the use of the govern- "ment without lawful authority, without process of law, "and without compensation, because the President has "ordered it, and his officers are in possession?

"If such be the law of this country, it sanctions a "tyranny which has no existence in the monarchies of "Europe, nor in any other government which has a just "claim to well-regulated liberty and the protection of per- "sonal rights." (Page 220.)

And this language was quoted *in extenso* and reap proved in Tindal vs. Wesley, 167 U. S., 217.

In Pennoyer vs. Neff, 95 U. S., 714, this Court points out the change made in the administration of justice by the Fourteenth Amendment to the Federal Constitution. It was dealing with an alleged judgment of a court of Oregon which was relied on by plaintiff, and attacked by defendant as having been entered without due process of law. The Court calls attention to the fact that in some cases, in speaking of personal judgments rendered without personal service of process or appearance, the courts had said that such a personal judgment has no binding force *without the State where rendered*, thus implying that it did have such effect *within the State.* The Court then says that "the language used can be justified only on the ground that there was *no mode of directly reviewing such judgment or impeaching its validity within the State where rendered.*" But, says the Court:

> "Since the adoption of the Fourteenth Amendment to "the Federal Constitution the validity of such judgments "may be directly questioned, and their enforcement in the "State resisted, on the ground that proceedings in a court "of justice to determine the personal rights and obliga- "tions of parties over whom that court has no jurisdiction, "*do not constitute due process of law.*" (Page 733.)

And of course the same thing would be true where for *any reason* it was claimed that the proceedings were not due process of law.

We call special attention to this case on account of its clear expression of the thought that since the adoption of the Fourteenth Amendment a judgment of a State tribunal against which there might previously have been no relief, because there was no means of attacking it, may now be

resisted or attacked by virtue of the power which this Court has to enforce the provisions of that Amendment. And the same thing of course would be true of any other provisions of the Federal Constitution that might have been violated by the judgment sought to be enforced.

This principle has a direct application to the case at bar. If the courts of Kentucky, when asked to enforce this alleged legislative judgment, say that they are bound to enforce it, and that, on account of the division of the powers of the State government, they can not inquire into it at all, but must conclusively presume it was all it should have been, *this Court* is not restrained by any such considerations when a party comes before it claiming that the alleged judgment violates the Constitution of the United States.

The cry of immunity of this alleged judgment from judicial investigation because it was the action of the General Assembly looses all its force when the case gets here, and should have had no force in the State Court, because this Court has held again and again that the prohibition of the Fourteenth Amendment against any State depriving any person of life, liberty or property applies equally to *all the departments of State government*—just as much to the legislative as to the judicial, and just as much to the judicial as to the executive—to every department or agency through which a State acts.

This principle has so often been reiterated by this Court that we hesitate to cite authorities upon it; and yet on account of the great importance of it in the case at bar we cite a few of the cases referred to.

In Chicago, Burlington, etc., R. R. Co. vs. Chicago, 166 U. S., 226, this Court said:

> "But it must be observed that the prohibitions of the "(Fourteenth) Amendment refer to all the instrumentali- "ties of the State, to its legislative, executive and judicial

"authorities, and, therefore, whoever, by virtue of public "position under a State government, deprives another of "any right protected by that amendment against depri- "vation by the State 'violates the constitutional inhibi- "tion; and as he acts in the name and for the State, and is "clothed with the State's power, his act is that of the "State.' This must be so, or, as we have often said, the "constitutional prohibition has no meaning, and 'the "State has clothed one of its agents with power to annul "or evade it.'" (Page 233.)

This case also shows clearly the searching power of this Court when investigating a claim that a citizen has been deprived of life, liberty or property without due process of law. The Court says:

"Nor is the contention that the railroad company has "been deprived of its property without due process of law "entirely met by the suggestion that it had due notice of "the proceedings for condemnation, appeared in court, and "was admitted to make defense. . . . But a State may not, "by any of its agencies, disregard the prohibitions of the "Fourteenth Amendment. Its judicial authorities may "keep within the letter of the statute prescribing forms of "procedure in the courts, and give the parties interested "the fullest opportunity to be heard, and yet it might be "that its final action would be inconsistent with that "amendment. In determining what is due process of law, "regard must be had to substance and not to form." (Page 234.)

So in Scott vs. McNeal, 154 U. S., 34, this Court, in referring to the prohibitions of the Fourteenth Amendment, said:

"These prohibitions extend to all acts of the State, "whether through its legislative, its executive, or its

"judicial authorities. (Citing authorities.) And the first "one, as said by Chief Justice Waite in United States vs. "Cruikshank, 92 U. S., 542, 554, repeating the words of "Mr. Justice Johnson in Bank of Columbia vs. Okely, 4 "Wheat., 235, 244, was intended 'to secure the individual "from the arbitrary exercise of the powers of government, "unrestrained by the established principles of private "rights and distributive justice.'" (Page 45.)

In *ex parte* Virginia, 100 U. S., 339, this Court said:

"We have said the prohibitions of the Fourteenth "Amendment are addressed to the State. . . . They have "reference to actions of the political body denominated a "State, by whatever instruments or in whatever modes "that action may be taken. A State acts by its legislative, "its executive, or its judicial authorities. It can act in no "other way. . . . Whoever, by virtue of public position "under a State government, deprives another of property, "life, or liberty, without due process of law, or denies or "takes away the equal protection of the laws, violates the "the constitutional inhibition; and as he acts in the name "and for the State, and is clothed with the State's power, "his act is that of the State. . . .

"We do not perceive how holding an office under a "State, and claiming to act for the State, can relieve the "holder from obligation to obey the Constitution of the "United States." (Pages 346 to 348.)

In Chicago, Burlington, etc., R. R. Co. vs. Chicago, 166 U. S., above referred to, the special subject of the Court's inquiry was the judgment of a State Court which was claimed to have deprived a person of property without due process of law. In the case of Scott vs. McNeal, 154 U. S., also referred to above, it was again claimed that the judgment of a State Court had deprived a person of his property without due

process of law; and this Court so held; and therefore reversed a judgment of a State Court where the former judgment had been relied on and attacked on the ground mentioned. In Village of Norwood vs. Baker, 172 U. S., 269, this Court held that an ordinance of the Village of Norwood assessing the cost of a local improvement upon certain land which was not benefitted by the improvement, was the taking of property without due process of law, and was therefore void. And hence the Court affirmed a judgment of the United States Circuit Court enjoining the village from enforcing the assessment. It will be observed that the act here stricken down by the judgment of this Court was the action of a town council, an act of a quasi judicial nature.

In Missouri Pacific Railway vs. Nebraska, 164 U. S., 403, the Board of Transportation of the State of Nebraska had made an order commanding the Missouri Pacific Railway Company to allow certain persons to erect an elevator on its right of way for their use. Suit was brought in a State Court to enforce this order. The Court did enforce it. And this Court reversed the judgment, on the ground that the order of the Board of Transportation was in effect a taking of property without due process of law, and was therefore void and *should not be enforced.*

We might continue at great length to cite cases where this Court has enforced the provisions of the Federal Constitution by declaring void, and thus nullifying, the action of *each of the three departments* of the State government, sometimes releasing a prisoner on *habeas corpus*; sometimes enjoining proceedings to enforce an arbitrary act of the State government; sometimes proceeding by a writ of error to reverse a judgment of a State court upholding and enforcing such act, and in other ways.

The authorities cited, and others which might be cited, show that this Court has never considered itself concluded on the question of whether or not a proceeding was due process

of law, by the judgment of the State tribunal, whether it be a State legislature, a State court, or a State executive officer.

In Davidson vs. New Orleans, 96 U. S., this Court uses the following significant language:

> "Can a State make anything due process of law which "by its own legislation it chooses to declare such? To "affirm this is to hold that the prohibition to the States is "of no avail or has no application where the invasion of "private rights is effected under the forms of State legisla "tion." (Page 102.)

And in the case already referred to of C., B. & Q. R. R. Co. vs. Chicago, 166 U. S., 235, the Court, after quoting the above language from Davidson vs. New Orleans, says:

> "The same question could be propounded and the same "answer should be made in reference to judicial proceed- "ings inconsistent with the requirement of due process of "law."

From these considerations it must be manifest that the claim of immunity from judicial inquiry, the claim to a conclusive presumption that "all is well," which was made and allowed in the State Court in favor of this alleged legislative "adjudication," can not be allowed here. It receives no peculiar sanction from the fact that it is claimed to be the action of the General Assembly. Neither the General Assembly itself, nor the Court of Appeals, in aid of it, can say "this was due process of law, because we have said so," and thereby deprive this Court of the power to inquire into the matter for itself.

In order for the Court to determine for itself whether or not the proceedings, now sought to be enforced herein, did constitute due process of law, or did violate any right secured by the Constitution of the United States to the parties com-

plaining, it becomes manifestly necessary to look into those proceedings and see what they were. If they can not be examined it can never be known whether they were due process of law or not.

IV.

The Alleged Legislative Adjudication.

As said in the beginning, this case comes to this Court practically on a petition and answer. The answer was demurred to, in a fragmentary way it is true, but the orders of the Court show the demurrer was to practically the whole answer, and it was sustained. (Rec. 1, p. 63.) The *facts* therefore are indisputed, and it is for this Court to say whether or not *the facts thus alleged* are sufficient to show that the alleged legislative "adjudication," now sought to be enforced herein, was made in violation of rights secured by the Federal Constitution. (Cov. & Lex. Turnpike vs. Sanford, 164 U. S., 595.)

We accept the construction by the State Court of the Constitution and statute of the State as to the respective duties and powers of the Contest Committee, or Board, and the General Assembly itself. As heretofore said, when we alleged that the Committee, or Board, was "packed" for Goebel; that many of its members had acted as counsel for Goebel, advising and urging him to make the contest; that others had contests on hand themselves over their own seats in the Assembly, in which the same questions were involved as were involved in the Goebel contest; that their rulings were flagrantly partisan and contradictory to each other; that they refused to hear argument, etc., the Court responded in effect that all this was of no moment, that the Committee was merely an advance agent to "take evidence and report the facts to the General Assembly;" and that "the Assembly itself finally determined the contest." (Rec. 1, p. 153.)

And in this connection it must be remembered that as a necessary sequence from the proposition that the prohibitions of the Fourteenth Amendment apply to all the departments of State government, it follows that a statute may be fair on its face, and yet its *administration* may be held to violate fundamental rights. The Court has so held:

"Though the law itself be fair on its face and impartial "in appearance, yet, if it is applied and administered by "public authority with an evil eye and an unequal hand, "so as practically to make unjust and illegal discrimina- "tions between persons in similar circumstances, material "to their rights, the denial of equal justice is still within "the prohibition of the Constitution."

Of course the principle is the same whether the objection is, that equal protection of the law has been denied, or that any other guaranteed right has been viol[illegible]

The effect of this construction of the law is that the proceedings before the Committee really do not constitute a trial at all—hence it makes no difference whether the members of the Committee are qualified or disqualified, partial or impartial, fair or unfair. But while this minimizes the importance of the Committee's actions, it vastly aggrandizes the importance of the actions of the General Assembly, and shows that under the law the only *real trial* of this great contest, in which such momentous interests were involved, was to be had before the General Assembly itself.

As to the nature of the *question to be tried* there can be, and is, no dispute. It was simply the question of who received the highest number of legal votes. The Constitution, on the subject of the election of a Governor, says:

"The person having the highest number of votes shall "be Governor." (Sec. 70.)

And again it says:

"Contested elections for Governor and Lieutenant-"Governor shall be determined by both houses of the "General Assembly, according to such regulations as may "be established by law." (Sec. 90.)

These regulations are set forth in the statute given in the appendix.

The official returns showed that Taylor had received the highest number of votes by 2,383. To show otherwise required evidence. And accordingly, in speaking of the question to be tried by the General Assembly, the Court of Appeals says, it was "*a question requiring evidence for its proper determination.*" (Rec. 1, p. 151.)

Remembering then these settled propositions (1) that the trial was to be by and before the General Assembly; (2) that the question was, who received the highest number of legal

votes? (3) that this was a question "requiring evidence for its proper determination;" and (4) that the official returns showed Taylor had received the highest number of votes by 2,383, let us inquire what are the facts as to this alleged trial by the General Assembly, the "adjudication" of which is plead as the foundation of this action.

Among other things it is *alleged* and *admitted* that:

A. The General Assembly had not a word of evidence before it, when it acted. No evidence was ever returned to it by the Committee which "heard" it. The members of the Assembly "acted without any knowledge of the facts as to said contests," and without any opportunity to form a judgment on the merits thereof; but acted arbitrarily, without knowledge and merely because they desired to see Taylor and Marshall deprived of their offices. (Rec. 1, pp. 41 and 43.)

B. This alleged trial was had at a *secret meeting*, one held *without any notice* either to Taylor or to Marshall, or to *a single Republican member of the body itself*, and without any opportunity to any of these parties to be present. The Republican members, thus excluded, constituted *more than one-third* of the entire membership of the Assembly. (Rec. 1, p. 42.)

C. The remarkable result was simply due to the fact, and it is a fact, that, before the contest was begun, it was arranged and agreed between Goebel and the members of the General Assembly, that the contest should and would be decided in his favor.

We will consider these grounds before proceeding to cite others.

A.

NO EVIDENCE.

On the subject of whether or not there was any evidence before the General Assembly when it pretended to make the "adjudication" sought to be enforced herein, the answer makes the following plain statement:

"Defendants further say that if the said Contest Committees did go through the form of making their aforesaid reports to any number of members of the General Assembly on either of the days aforesaid, and if the said members of the General Assembly did go through the form of adopting said reports or declaring the contestants, William Goebel and J. C. W. Beckham, respectively Governor and Lieutenant-Governor of the State, *the said reports were not accompanied by any statement of the evidence heard by said Committees* or the grounds of their action or finding, and the said members of the General Assembly, if they acted on said reports, *acted without any knowledge of the facts as to said contests*, and without considering what the facts were, and without endeavoring to form any judgment upon the merits of the said contests, and without even an opportunity to form such judgment, if they had been so disposed, but they acted, if they acted at all, purely arbitrarily without knowledge of the facts and merely because they desired to see these defendants deprived of the offices aforesaid and to see the said contestants given the said offices, pursuant to the agreement and conspiracy to that effect which had been formed before said contests were heard or determined, as heretofore stated." (Rec. 1, p. 41.)

And again as to an alleged "ratification" on February 19th and 20th of the preceding "adjudication" of February 2d, the answer makes the following statement, to-wit:

"And the actions of the said members of the General Assembly on those two days were without any regard whatever to the evidence or knowledge thereof, *and without having any evidence before them, no evidence having ever been returned by said Contest Boards*, and without any consideration of either the law or the facts bearing upon said contests." (Rec. 1, p. 43.)

Now the General Assembly was to try a contest between two parties over a question of right. This was the only power it had. The question was one which required evidence for its proper determination. It was one which could not be determined without evidence. Omniscience is an attribute of the Creator, but he has not imparted it to his creatures. We know that the judicial power to determine a question of fact simply can not be exercised without the evidence upon which the determination must depend. It is an impossibility. This General Assembly, however, when it pretended to make the adjudication sought to be enforced herein, had no evidence before it. Yet it pretended to "adjudge and determine" a question of fact.

The Constitution adopted by the people says "the person having the highest number of votes shall be Governor." The official returns from the election, as certified by the State Board of Election Commissioners, showed that "William S. Taylor received the highest number of votes given for that office." (Rec. 1, p. 17.) But the General Assembly, without any evidence before it, "adjudged and determined" that William Goebel received the highest number of legal votes; whereupon he was declared to be Governor. This was not an adjudication of a contest over a question of who received the highest number of votes. It was an *appointment* of a Governor.

There was *no basis* for an adjudication to this effect. The *prima facie* right was admittedly with Taylor. This was

denied on specific grounds set forth in a notice of contest. (Rec. 1, p. 19.) These grounds were specifically controverted (Rec. 1, p. 30)—though the law does not require this—*and there was no proof.* Yet, under such conditions, the General Assembly "declared" that William Goebel was Governor of the Commonwealth. (Rec. 1, p. 88.)

This is the "adjudication and determination" which the Court is asked to enforce against William S. Taylor and the people of Kentucky. It is a mockery, a travesty, to call it an "adjudication."

The power vested by the Constitution in this body was a power of trial, and not a power of appointment; a power, the exercise of which, as said by the Court of Appeals, required evidence as a basis of action. The assembly in this matter was a tribunal of special and limited jurisdiction. It had no jurisdiction to try without evidence a question which could only be tried with evidence. And when it proceeded, without evidence, to declare William Goebel Governor, it was simply proceeding beyond its jurisdiction.

In the case of Kilbourn vs. Thompson, 103 U. S., 168, 197, where the lower House of Congress attempted to punish a man for contempt, this Court said:

> "But we do not concede that the Houses of Congress "possess this general power of punishing for contempt. "The cases in which they can do this are very limited, as "we have already attempted to show. If they are proceed-"ing in a matter beyond their legitimate cognizance, "we are of opinion that this can be shown, and we can "not give any assent to the principle that, *by the mere act* "*of asserting* a person to be guilty of a contempt, they "thereby establish their right to fine and imprison him, "beyond the power of any court or any other tribunal "whatever to inquire into the grounds on which the order "was made. This necessarily grows out of the nature of

"an authority which can only exist in a limited class of "cases, or under special circumstances; otherwise the "limitation is unavailing and the power omnipotent. "The tendency of modern decisions everywhere is to the "doctrine that the jurisdiction of a court or other tribunal "to render a judgment affecting individual rights is always "open to inquiry, when the judgment is relied on in any "proceeding." (Page 197.)

Neither is it true that in a matter wherein a court, or tribunal acting in a judicial capacity, has jurisdiction it can then do as it may please. In the case of Windsor vs. McVeigh, 103 U. S., 274, heretofore quoted, this Court said:

"The doctrine invoked by counsel, that where a court "has once acquired jurisdiction it has a right to decide "every question which arises in the cause, and its judg- "ment, however erroneous, can not be collaterally assailed, "is undoubtedly correct as a general proposition, but, like "all general propositions, is subject to many qualifications "in its application. All courts, even the highest, are more "or less limited in their jurisdiction: they are limited to "particular classes of actions, such as civil or criminal; or "to particular modes of administering relief, such as legal "or equitable; or to transactions of a special character, "such as arise on navigable waters, or relate to the testa- "mentary disposition of estates; or to the use of particular "process in the enforcement of their judgments. (Norton "vs. Meador, Circuit Court for California.) Though the "Court may possess jurisdiction of a cause, of the subject- "matter, and of the parties, it is still limited in its *modes* "*of procedure*, and in the extent and character of its judg- "ments. *It must act judicially in all things*, and can not "then transcend the power conferred by the law. . . . If "the action be for a libel or personal tort, the Court can "not order in the case a specific performance of a con-

"tract. . . . Instances of this kind show that the general "doctrine stated by counsel is subject to many qualifica- "tions. The judgments mentioned, given in the cases "supposed, would not be merely erroneous; they would be "absolutely void: because the Court in rendering them "would transcend the limits of its authority in those "cases." (Page 282.)

And so upon the principle involved in the foregoing quotation, this Court in the case of Reynolds vs. Stockton, 140 U. S., 254, held that a judgment which is in no way responsive to the pleading in a cause is void. And the same thing exactly has been held by the Court of Appeals of Kentucky. (Allsmiller vs. Freuchenicht, 86 Ky., 198.)

Now why should pleading be so much more sacred than proof? Can it be said, where a tribunal exercising a limited judicial jurisdiction, pretends to determine *a disputed question of fact, in favor of one who has the burden of proof*, and when it has *no evidence before it*, that it has acted according to the principle asserted in Windsor vs. McVeigh that, "It must act judicially in all things."

We submit that the pretended adjudication was absolutely void; that it was not the exercise of the power committed to this body, as construed by the Court of Appeals; it was not the exercise at all of the power of adjudication; the opportunity for the exercise of that power was not presented; it was the exercise of the unauthorized power of appointment, a power like that which the Electoral College exercises when it chooses a President. But as no one claims that the people of Kentucky have ever committed to this body any power of appointing a Governor, the act was therefore simply an act of arbitrary power, done in the name of the State, by an agency of the State, whereby, if enforced, the people will be deprived of the liberty of choosing their Governor, and Taylor will be deprived of the right to an office of high honor and emolument.

How does the Court of Appeals avoid this result? Its reasoning is as follows:

"As it was a question requiring evidence for its proper "determination, *it must be presumed that the Legislature* "*did its duty*, and had before it such evidence as was satis- "factory to it." (Rec. 1, p. 151.)

In other words, the General Assembly can do no wrong.

Of course, if this conclusive presumption of right-doing is to prevail, then there is an end of all inquiry. If, when the citizen complains that his rights have been taken from him by an arbitrary act on the part of some department of the government, and without due process of law, the Court is to indulge in the conclusive presumption that the tribunal charged with the wrong did its full duty, then of course no relief can be had. But we believe we have shown in the foregoing part of this brief that no such conclusive presumption exists in favor of any officer, or any tribunal, when the citizen claims that by him or it he has been deprived of his lawful rights without due process of law.

The Court in its opinion does not accurately state the facts as to the manner in which this question arises on the record. The Court says that because the journals do not show any evidence to have been returned, and because the report of the Committee does not purport to return any evidence, that it is *therefore* insisted that the General Assembly acted without evidence. We have heretofore quoted the allegations of the answer on this subject, from which it will be seen that the answer is not thus argumentative. It makes the direct and positive allegation that *no evidence was returned.* It is true the report fails to show that any evidence was returned with it; and it is true that the journals fail to show that any evidence was returned; and it is true that in the action taken by the General Assembly, as exhibited

by the journals, no allusion is made to any evidence as having been received or considered; and it is true that all this lends silent and convincing support to the allegation of the answer; but that allegation is not an argument; it is the *positive assertion of a fact*, because it is a fact, that no evidence was returned or considered.

Again the Court, after presuming that the evidence was returned, because the Assembly could not have lawfully acted without it, further presumes that the members not only had this evidence before them, but received information concerning it from the members of the Committee. The Court says there is nothing in the record "to raise the presumption" that this was not true. We have not sought to raise a presumption. We have directly alleged the fact that the General Assembly had neither evidence before it, nor knowledge of the facts, but acted without knowledge, without evidence, and without any opportunity to form a judgment upon the subject.

The Court quotes Cooley's Constitutional Limitations to the effect that when evidence is required it must be supposed the Legislature had it. But the very quotation itself shows on its face that Judge Cooley is speaking of the Legislature when acting in its ordinary law-making capacity of passing acts, and not when it is acting in a limited judicial capacity in determining a disputed question of existing right between two rival claimants.

And it is well understood that legislatures, proceeding with the business of legislation, do not gather their information as courts are required to do. They proceed upon information, upon hearsay, frequently in simple obedience to public opinion, all of which is wholly inadmissible in the exercise of the judicial capacity, where the existing rights, or claims of existing right, of individuals are to be tried and determined.

The Legislature is given no power to "enact" or to "pass" a Governor, but simply to decide a question of existing right between two claimants—a decision upon the correctness of which depends the question of whether or not the people shall be represented by the officer they have chosen; and, as Chief Justice Marshall in Marbury vs. Madison, heretofore quoted, shows that this right to an office, not subject to the power of revocation or discretionary removal, is a vested legal right, so is the right of the citizen to vote and to vote with effect.

Of course it will be observed that the foregoing considerations do not rest to any extent on the charge of fraud, although that allegation is made in the answer, and will be hereafter noticed. Hence, authorities about inquiring into the motives of members of the General Assembly are not now in place. For the present we speak simply of the fact that the act under consideration was an arbitrary edict and not an adjudication. For the present we care nothing for the motive, it may have been a fraud or it may have been mere "sport."

Neither does the allegation that there was no evidence before the General Assembly involve any *contradiction of the journal.* Hence authorities on the verity of journals have no application. So far from the journals contradicting the allegation that there was no evidence returned to the General Assembly they support it, for they show none.

The Court of Appeals says, however, that "in those States where the *enrolled bill* is not held conclusive, it is uniformly held, where the journals are merely silent, that the presumption is absolute that the required steps were in fact taken." In the first place, this is incorrect as a statement of fact. Some courts hold that as the journals are required to show what occurred, therefore silence of the journal as to a suggested occurrence is taken as conclusive evidence that it did not occur. Cohn vs. Kingsley (Idaho), 49 Pac. Rep., 985.

But, however that may be, we are not dealing here with an "enrolled bill," but with a pretended "judgment" disposing of an existing right, or at least claim of a right secured by the Constitution. And, as heretofore said, if the Court is to indulge an "absolute" presumption, even from mere silence of the journal, that the Legislature in passing judgment on a contest did exactly what was right and no more, then all inquiry stops, and the Court is shorn of any power to find out whether or not the proceedings complained of were due process of law, for it cannot learn what the proceedings were.

In the same connection the Court of Appeals refers to McCulloch vs. the State, 11 Ind., 433, where the Court likens the presumption indulged in support of the actions of the Legislature, to presumptions in support of the proceedings of courts; and says it has been repeatedly decided that where the record of a court, possessing general powers, is silent as to whether a party defendant had notice of suit, it will be presumed that the steps necessary to give jurisdiction of the person were properly taken. But does any one contend at this day, and in this court, that where the record of a court of general jurisdiction is silent as to whether or not a defendant was served with notice, it will be *conclusively* presumed that he had notice, and that he will be denied the liberty of showing that he did not have notice? We take it this will hardly be contended for. (Pennoyer vs. Neff, 95 U. S., 714, 732.)

We hope that by this discussion in reviewing the opinion of the Court of Appeals, we have not drawn this Court's attention away from the bald fact, which is distinctly alleged and is not controverted by anything, and is admitted, that the grounds of contest specified in Goebel's notice of contest were specifically controverted; that there was not a word of evidence before the General Assembly to support them, though it was the tribunal that was really to try the

matter—conclusions of the Committee being of little moment —and yet, in the face of the official returns showing a majority of 2,383 for Taylor, and without a word of evidence to contradict or impeach them, the General Assembly has pretended to "adjudge and determine" that Goebel was elected; and this is the adjudication and determination which this Court is now called on to enforce, a merely arbitrary edict of this department of the State, depriving Taylor and the people of the State of sacred and valuable rights secured to them by the Federal Constitution.

B.

SECRET SESSION.

We have seen that the General Assembly was to hear, try, and determine the contest; that the proceedings before the Committee and its action were of little moment; we have seen that this "trial," resulting in the falsification and overthrowal of the official returns of the election, was without evidence, which was absolutely essential to such action; but we now proceed to state a still more remarkable feature of this alleged "trial" which resulted in the "adjudication" which the Court is now asked to enforce.

The session at which this was done (February 2d, as the judgment herein finds—Rec., p. 70) was a *secret session*, of which no notice, nor opportunity to be present, was given either to Taylor or to Marshall, whose rights or claims were to be tried and determined, nor to any of the Republican members of the Assembly itself, who constituted more than one-third of the entire body (53 out of 138.) These facts are specifically alleged and admitted. (Rec. 1, p. 42). *A secret trial*, without notice to the parties to be tried, and from participation in which all those members of the tribunal who are suspected of being friendly to the intended victims are

excluded! It is the "adjudication" resulting from this "trial" which this Court is asked to enforce, and which both Taylor and Marshall, again in their pleading in this immediate connection, claim was not due process of law, and which the people claim will, if enforced, deprive them of their political liberty, and of the benefits of a republican form of government, contrary to the Constitution of the United States. (Rec. 1, p. 42.)

To this it will be answered against *Taylor* that he had attempted to adjourn the Legislature on January 31st, which the Court of Appeals has held he had no power to do, and that he, by force, prevented the General Assembly from meeting in the Capitol buildings. And it is alleged that on January 31st he prevented them from meeting at two other public places in Frankfort, though it is not alleged that subsequent to January 31st he prevented them from meeting publicly anywhere except in the Capitol building. (Rec. 1, p. 6.) On this account it will be claimed Taylor forfeited all right to notice of the trial of his case on February 2d.

But passing for the moment the case of Taylor, how did Marshall forfeit his right to notice? No one claims that he ever did anything to forfeit the right to notice and an open trial. His case was absolutely distinct from Taylor's. The contestants were different; the contestees were different; the notices of contest were separate, though the same in form; the committees who took the evidence were different, though for convenience they sat together. In other words, the two contests were wholly distinct and separate. We have then the admitted fact that Marshall's case was tried, and his office taken from him, and he, the officer chosen by the people, was put out and another, not thus chosen, put in his place, by a pretended "adjudication" had at a *secret session* of certain members of the Assembly of which he had *no notice*, and at which he had *no opportunity to be present;* and there is no

suggestion of any act done by him to forfeit his right to such notice.

We will not laden the brief with authorities to show that a judgment without notice or hearing is void. Even in proceedings *in rem* notice of some kind, either actual or constructive, is essential. "The manner of the notification is immaterial, but the notification is indispensable." (Windsor vs. McVeigh, 93 U. S., 274-279.) Two thousand years ago Nicodemus asked of the Jewish Sanhedrim: "Doth our law judge any man before it hear him?"

But, furthermore, and what is just as important, how did Taylor's action, conceding it to be without authority, have the effect to destroy the right of the people to have all the members of the General Assembly present when the important question of who were their chosen officers was to be tried? Even if Taylor's mistake of judgment were cause of impeachment, this tribunal was not sitting as a Court of Impeachment. And if Taylor had been impeached and convicted, that would not have given the office to Goebel. These members of the Assembly at this secret session ousted Taylor and seated Goebel; pretended to "adjudge" that Goebel had received the highest number of legal votes by the people of Kentucky, and that he had been chosen by the people of the Commonwealth to be their Governor. They, the people, had a vital interest in this question, and whatever might have been Taylor's actions, the people had a right to have all the members of the Assembly present, or afforded an opportunity to be present, when any trial or adjudication was had to the effect that the official returns were all wrong, and that William Goebel had really been elected Governor, and J. C. W. Beckham Lieutenant-Governor.

We can not conceive it to be possible that such action taken at a *secret meeting*, of which more than one-third of the members of the body have no notice and no opportunity to be present, can have any legal force. Even in the com-

paratively unimportant matter of the meeting of corporate bodies the universal rule is that, except at the stated public meetings where the time and place of meeting are fixed by charter or by-law, notice and an opportunity to be present must be given to every member; for even though those not notified may be a minority, yet they are entitled to be present and use their influence with the others; and this is especially true of representative bodies like boards of directors.

It must be remembered that this lack of notice, or opportunity to be present, and the fact that the meeting was a secret meeting, are distinctly alleged, and are admitted. The question may be asked: What do the journals show as to the meeting? The showing is very significant. The meeting at which it is claimed the action was taken, and which the Court has fixed in its judgment, was February 2d. Now the journals of February *1st* show that each House adjourned, not to a fixed time, but *to meet at the call of its presiding officer*. The journal of the Senate shows that on February 1st it adjourned "*to meet on the call of Mr. Utley, presiding officer of the Senate;*" and that on February 2d, "at 2:30 o'clock P. M., the Senate *met on the call of Honorable Newton W. Utley, presiding officer of the Senate*, the President being absent." (Rec. 87.) The House journal of February 1st says the House adjourned to meet again "*at the call of the Speaker;*" and the journal of February 2d simply says "the House met at 2:30 P. M., and was called to order by Speaker Trimble." (Rec. 103.) *It does not even say it met on the call of the Speaker.*

The Republican members were never *called*. What such an adjournment means we are not able to say. We have been wholly unable to discover any authority or precedent for such an adjournment by a legislative body. There is certainly no law in Kentucky providing for it. The Houses in making the adjournment did not provide how the presiding officer should make the call. And, as heretofore said, the

answer expressly alleges that not a Republican member was notified or given an opportunity to be present, and that the same is true as to both Taylor and Marshall.

We therefore submit that on these grounds just considered the pretended "adjudication," which the Court is asked to enforce, was not due process of law, and was an utter nullity.

We confess there is suggestion of fitness in the failure to give notice of a meeting of a tribunal which was to try and to decide, *without evidence*, a question which could only be decided *upon evidence;* and, furthermore, that a contest, the success of which depended, as we will presently show, on disfranchising the people of a large part of the State, should be tried at a meeting of the Assembly from which the representatives of that same portion of the State were excluded.

C.

Agreement Between Judge and Litigant.

The pretended "adjudication" which the Court is asked to enforce did not result from the operation of hearing and determining, but was simply the result of an agreement, made before the contest began, between the supposed triers of the contest and one of the contestants, by which it was agreed that the contest should be decided in his favor. (Rec. 1, p. 8, 19 and 25.) It was *not the exercise of judgment, but the performance of a promise*. Is that due process of law? Is that according to the law of the land? Was that "a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights?" (Pennoyer vs. Neff, 95 U. S., 733.)

The following is the plain and positive allegation of the answer (page 18), viz.:

"But defendants say that the Constitution of Kentucky provides that 'contested elections for Governor and Lieu-

tenant-Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law' (Sec. 90); and after the election of these defendants to the offices aforesaid a conspiracy was entered into by and between the aforesaid William Goebel and J. C. W. Beckham, and their agents and representatives, and a large number of the members-elect of the General Assembly of Kentucky, which met on January 2, 1900, in and by which it was agreed that if contests should be made by said Goebel and Beckham for said offices of Governor and Lieutenant-Governor, before said General Assembly or the Houses thereof, the said contests would be decided in favor of said contestants. Said agreement was entered into before said contests were heard or determined, as hereafter more fully set forth, and the decision of said contests was the result of said agreement." (Rec. 1, p. 18.)

It could hardly be expected that many authorities would be found on such a question as is here presented, but it is hard to conceive of such a mockery of justice being entitled to the appellations of "trial" and "judgment." And such, in an early case, was the expressed opinion of this Court, speaking through Chief Justice Marshall.

In the case of Slacum vs. Simms, 5 Cranch., 363, a surety, when sued upon the debt, pleaded a discharge granted by two magistrates under a Virginia statute. It turned out that the surety was himself one of the magistrates which had granted the discharge. Speaking on this subject the Court, through Chief Justice Marshall, said:

"It can not be doubted that if there had been a *com-*
"*bination* between the surety of the insolvent and the
"magistrate to grant the discharge, such surety could never
"plead that discharge in bar of this action. *Such would*
"*have been the law if Peter Wise, the surety, had been a*
"*different person from Peter Wise, the magistrate.* But

"being the same person, he is clearly incompetent. He is "directly interested, and his interest appears upon the "record."

As said by the Court of Appeals of New York in Oakley vs. Aspinwall, 3 N. Y., 549, etc.:

"The first idea in the administration of justice is that "a judge must necessarily be free from all bias and parti- "ality. He can not be both judge and party, arbiter and "advocate, in the same cause. Mankind are so agreed in "this principle that any departure from it shocks their "common sense and sentiment of justice."

Such an agreement as is alleged in the answer in the case at bar is an infinitely stronger reason for disqualifying one acting in a judicial capacity than mere relationship to one of the contestants, or even some pecuniary interest. It utterly puts out of play the faculty of judging.

Again the peculiar character of this tribunal must be considered. It was one of special and limited jurisdiction. There was no way of reviewing its proceedings by appeal or writ of error. And it was useless to appeal to the tribunal itself for relief, for its members were the guilty parties to the wrong. Therefore unless the enforcement of such a mockery of a judgment can be resisted when its enforcement is sought in the courts, there is no relief at all to be had, but the victims of the outrage must submit and allow it to pass as "due process of law."

But again we are met with the maxim, "The King can do no wrong." It is said that although an agreement, or, as Chief Justice Marshall calls it, "a combination," between the judge of a regular court and one of the contestants before him would render the pretended judgment a nullity, yet a peculiar sanctity doth hedge about these legislative judges, and it is not "seemly" to consider such charges against them. Again

it is said: will the judiciary arrogate all the purity of the world to itself with pharisaical piety? Of course the answer to the latter question is that it never has done so. It is conceded that if a judge prostitutes his office by an agreement to decide a case for a party, the pretended judgment when sought to be enforced, or in any manner relied on by that party, will be disregarded. The claim of a sanctity inviolate which is now made on behalf of the legislator acting as judge, could never be supported in favor of a real judge, and we can conceive of no reason why it should be upheld in favor of the legislative judge who undertakes to "adjudge and determine" the *rights of others.*

It may be true that when the Legislature is proceeding with its ordinary duties as law-makers in enacting laws, granting charters to corporations, and doing other acts in the exercise of a discretion confided to them, and which do not, and in their very nature cannot, dispose of the vested rights or claims to vested rights of any one, they are not answerable to any one, except their political constituents, for the faithful discharge of their duties. There is no chance here for the exercise of arbitrary power over the rights of any individual. But when in a peculiar case the law does invest the members of the Legislature with powers, judicial in their nature, to pass on contested claims of existing right, their proceedings are not immune from judicial inquiry when some one claims that they, acting for the State, have deprived him of liberty or property without due process of law, contrary to the provisions of the Federal Constitution.

We have spoken up to this point solely of the proceedings of the General Assembly, or alleged General Assembly, itself. We have shown that under the law, as construed by the Court of Appeals, the proceedings of the Committee were of little importance, and that the real trial was required to be before the General Assembly itself. And we have shown that the pretended trial there was at a *secret*

session, of which *no notice*, nor opportunity to be present, was given to either *Taylor or Marshall*, or to *any of the Republican members of the body itself*, constituting more than one-third of the membership. We have shown that it had no evidence before it, when pretending to hear and determine a question that it was impossible to determine without evidence. And in addition to all this we have shown that the alleged adjudication was made simply in execution of an agreement, made before the contest was instituted, to the effect that it should be decided in favor of the contestant. And we submit that the pretended "adjudication" thus made, and which this Court is now asked to enforce, would, if enforced, be a violation of the promised protection of "due process of law" which, in the language of this Court in Bank vs. Okely, 4 Wheat., 235, 244, approved in Hurtado vs. California, 110 U. S., 516, was "intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

Grounds of Contest.

Thus far we have not considered the proceedings before the Committee, because its action was of no moment, and the evidence taken by it was not returned to the General Assembly, and is, therefore, unimportant; but if we should consider its action, or consider that evidence as having been returned to the Assembly, then we confidently assert that, if either or both of the only two grounds of contest upon which the contest was really made at the hearing before the Committee, as shown by the evidence introduced, should be considered as in fact established, and Goebel or Beckham be installed in the Governor's chair on those grounds, or either of them, then beyond all question the people of Kentucky have, *by the State's own wrong*, been denied the privilege of

choosing a Governor, and have been thus deprived *by the State of Kentucky* of their political liberty and of the benefit of a Republican form of government.

As neither the Committee nor the General Assembly (supposing it to have had the evidence before it) gave any intimation as to which of the grounds of contest it found to be sustained, and as the validity of its action in declaring Goebel Governor may possibly depend on this point, we have a right to look into the procedure to see if we can tell on what ground it proceeded.

A question of this kind arose in Pennsylvania in the case of Jones vs. Jones, 12 Pa. St., 350.

An action of ejectment was brought to recover a tract of land. The question of title turned on the validity of a divorce granted by the Legislature of Pennsylvania. The Constitution of Pennsylvania provided that the Legislature should not grant a divorce on any ground upon which the courts were authorized to grant a divorce. In this particular case the act of the Legislature granting the divorce *did not state the ground on which it was granted.* The party opposing the validity of the divorce offered to prove, by the production of the papers filed before the Legislature, and possibly by other evidence, the ground on which the divorce was granted, and insisted that this was a ground over which *the courts* had jurisdiction and over which therefore the Legislature had no jurisdiction. It was strenuously insisted that this evidence was incompetent; that the Court *must presume* that the Legislature acted upon some ground upon which it had the right to act; and the lower court so held. The Supreme Court of Pennsylvania, however, reversed this judgment and in the course of the opinion the judge delivering it said:

"I place the decision on the broad ground that the "'*Constitution* must be preserved,' and that if the Courts "should refuse to permit evidence to show the grounds of

"the divorce, the Legislature could obliterate the clause in "the Constitution. *This is a question of property result-* "*ing from the divorce.* The party has a right to the pro- "tection of the constitutional provision, and if necessary, "the Court can touch the act with the judicial wand, and "open it to inspection, so as to see whether or not it is "within the pale of the Constitution." (Page 355.)

We ask the Court to touch the act under consideration with the judicial wand, open it to inspection and see if therein was due process of law, as required by the Federal Constitution.

And so we have already seen that this Court in Kilbourn vs. Thompson, 103 U. S., 197, decides practically the same proposition as to a House of Congress punishing for contempt; saying the Court would inquire into the "*grounds on which the order was made.*"

In C., B. & Q. R. R. Co. vs. Chicago, 166 U. S., 226, as we have seen, this Court also said:

> "Nor is the contention that the railroad company has "been deprived of its property without due process of law "entirely met by the suggestion that it had due notice of "the proceedings for condemnation, appeared in court, and "was permitted to make defense . . . . But a State may "not, *by any of its agencies*, disregard the prohibitions of "the Fourteenth Amendment. *Its judicial authorities may* "*keep within the letter of the statute prescribing forms of* "*procedure in the courts, and give the parties interested the* "*fullest opportunity to be heard, and yet it might be that its* "*final action would be inconsistent with that Amendment.* "*In determining what is due process of law regard must* "*be had to substance and not to form.*"

Then after quoting the language of the Court in Davidson vs. New Orleans, 96 U. S., 102, that a legislature can not

make anything due process of law which it chooses to call such, then says the same thing is true of a court.

In Wilson vs. North Carolina, 169 U. S., 586, a case so strongly relied on as an authority against us, the Court, after saying it would be "reluctant" to review the political administration of a State government, concludes its opinion with the following significant language, viz.:

> "The jurisdiction of this Court would only exist in "case there had been, by reason of the statute and pro- "ceedings under it, such a *plain and substantial departure* "from the fundamental principles upon which our govern- "ment is based, that it could with truth and propriety be "said that, if the judgment were suffered to remain, the "party aggrieved would be deprived of life, liberty or "property in violation of the provisions of the Federal "Constitution." (Page 596.)

And in an earlier case than either of those just cited, viz., *in re* Kemmler, 136 U. S., 436, this Court had said:

> "Undoubtedly the Amendment forbids any *arbitrary* "deprivation of life, liberty or property. . . . In order to "reverse the judgment of the highest Court of the State "of New York we should be compelled to hold that it had "committed an error *so gross* as to amount in law to a "denial by the State of due process of law to one accused "of crime." (Page 448.)

We cite these authorities to show that a State can not "*by any of its agencies* disregard the prohibitions of the Fourteenth Amendment"; that "the Constitution must be preserved"; that it is not satisfied with the mere "form of law"; that "in determining what is due process of law regard must be had to substance and not to form"; that a tribunal may by its *forms* keep "within the letter of law" and yet by its final action deny "due process of law."

With these principles before us we again ask you to "touch with the judicial wand" the alleged "adjudication" which is sought to be herein enforced, "open it to inspection, so as to see whether or not it is within the pale of the Constitution" of the United States.

Certainly we have a right to inspect the proceedings for the purpose of finding out, if we can, *on what ground* the remarkable conclusion was reached either by the Committee or the Assembly, supposing the evidence taken by the Committee to have been returned to the Assembly; for the ground of the action may, as in Jones vs. Jones, 12 Pa. St., *supra*, or in Kilbourn vs. Thompson, 103 U. S., *supra*, have a strong bearing on the validity of the action. And in this connection we ask the Court to remember that the alleged "adjudication" did not merely declare Taylor not to be Governor, but it declared Goebel to be Governor of Kentucky.

In the first place we know the action could not have proceeded upon any ground not set forth in the written notice of contest, for this the statute expressly forbids. It says:

> "The notice shall state the grounds of the contest, and "*none other shall afterwards be heard as coming from such* "*party*; but the contestee may make defense without "giving counter-notice." (Kentucky Statutes, Sec. 1535, Sub-Sec. 1.)

We can therefore exclude any possible ground not set forth in the notice.

Moreover no one can object if in this consideration we indulge *a presumption of honesty*. It does not lie in the mouth of the tribunal, or of him who claims under its action, to deny this presumption. Now the tribunal could not *honestly* have acted upon any ground of contest—though alleged in the notice—as to which there was *no evidence whatever* introduced in its support. Facts are sometimes

alleged by a pleader, which upon the trial he finds himself wholly unable to produce any evidence to support. So it was n this matter; there were ten paragraphs in the notice of contest, each one setting forth a different ground of contest. (Rec. 1, page 19.) But as to many of them there was not even a pretense of introducing evidence to support them.

The answer contains the following specific allegation, which is admitted by the demurrer, viz.:

"As to the fourth, fifth, eighth, ninth, and tenth grounds of contest set forth in said notice of contest, viz.: . . . there was *not a scintilla of evidence introduced before said committees.*

"*The only* grounds of contest *upon which there was any pretense of introducing evidence* were those set forth in the first, second, third, sixth and seventh paragraphs of the notice." (Rec. 1, p. 33.)

This is alleged as a fact in the answer. It is admitted as a fact by the demurrer. And it is shown to be a fact by the exhibit filed with the answer, which contains every word of testimony heard before the committees. (Vol. 2, 3, and 4; the direct evidence of the contestant being all in volume 2.) There is just one possible exception to the statement of the answer in this regard, which, in order to conform to exact truth ought possibly to be stated. *One* witness, speaking of *one* precinct, in *one* county, in the State, did say that *three* persons voted at that precinct whom he knew to be non-residents of the State, and that 176 persons voted there whom he did not know, and whom he believed to be not entitled to vote there. (Testimony of R. B. Bradley—Rec. 2, p. 56.) It may be contended that this was evidence tending to support the tenth ground of contest, viz.: that "many thousands of persons were unlaw-

fully brought into the Commonwealth, who were not entitled to vote at the said election" and were voted at the same. In drawing the answer we did not believe that the testimony of the witness referred to could be properly called a "scintilla" of evidence to support this tenth ground.

We are thus reduced certainly to the first, second, third, sixth and seventh grounds of contest.

The *seventh ground of contest* was an alleged conspiracy between the Republican party and the United States Marshal for the District of Kentucky to overawe and intimidate democratic voters. The answer alleges there was an utter failure of proof on this subject, "unless it should be deemed such evidence that it was publicly stated that all persons who should be guilty of any violations of the Federal laws as to intimidating negro voters, or conspiring to prevent them from voting, would be prosecuted for such violations of the law. And no person could possibly have been or was influenced by any such declaration, unless he was contemplating the performance of some acts forbidden by law as to the obstruction of negroes in their right to vote." (Rec. 1, p. 39.) This is alleged and admitted. In fact the only evidence introduced on this subject was the charge of a Federal Court to its grand jury, and the publication of that charge in the newspapers in the city of Louisville.

The *sixth ground of contest* was that in the counties of Knox, Lewis and Jefferson, election officers were compelled, by injunctions, to sign false certificates. The answer alleges that as to Lewis county not a scintilla of evidence was introduced. It further alleges that as to Knox and Jefferson counties there was not a scintilla of evidence to show that any officer was compelled to certify anything that was untrue; but that in Knox the County Board was simply ordered to canvass the returns and certify the result; and that in Jefferson the precinct officers in only *one precinct*, a precinct where they had failed to count the ballots, were ordered to count

them and certify the result, without directing them how. But the answer further alleges — and it is a matter of record—that in Knox county Taylor's returned majority was only 1,385, and in the one precinct referred to in Jefferson it was only 15, so that if these be *thrown out as requested*, it would only deduct 1,400 votes from Taylor's majority in the State; and as that was 2,383, *this would not change the result.*

The *third ground of contest* was the alleged wrongful issuing of a mandatory injunction by the Jefferson Circuit Court in Louisville, directing the admission into the polling places of certain persons not authorized to be there. But the answer alleged that it was shown in evidence that the matter here referred to was simply an order of injunction (which the contestant Goebel introduced in evidence—Rec. 2, p. 50) commanding the admission, *after the voting was over and the polls had closed*, of certain persons called "inspectors" merely to *witness the count*, without any power to determine how any vote should be counted, but simply to see if and how it was counted. (Rec., 1, p. 37.)

Indulging the presumption of honesty it can not be presumed, or believed, that the alleged "adjudication" sought to be herein enforced was based on either of the three grounds just mentioned, viz., the third, sixth or seventh.

By this process of exclusion we are reduced to the first and second grounds of contest, viz.: (1) Thin ballots in the mountain counties and (2) military intimidation in Louisville. And the slightest inspection of the record will show that they are the only two grounds on which the contest was really made. The entire evidence in chief of the contestant is contained in volume 2 of the Record which consists of 226 pages (exclusive of the contestee's counter-notice of contest which is bound in the beginning of this volume.) Now these 226 pages of evidence are distributed as follows, viz.:

Vote in Louisville:		
Pages 1 to 56	56	
Pages 124 to 175	51	
Pages 184 to 226	42	149
Thin Ballots:		
Pages 61 to 107	46	
Pages 112 to 125	13	
Pages 178 to 184	6	65
One witness as to three imported voters:		
Pages 56 to 61		5
Charge to Federal Grand Jury:		
Pages 107 to 112		5
Tabulated vote of the State by Counties:		
Pages 176 to 177		2
Total		226

It is proper to state, however, that included in the evidence tabulated above, relating to the city of Louisville, is the evidence as to the issue of the injunctions mentioned, including copies of the papers; and, likewise, a small part of the evidence tabulated as relating to the thin ballot counties refers to the injunction in Knox county, which was one of the alleged thin ballot counties.

We now proceed to consider the two real grounds of contest mentioned, and we repeat that if either Goebel or Beckham should be made Governor of Kentucky on either or both of those grounds, then, beyond all question, the people of Kentucky, *by the State's own wrong*, have been denied the privilege of choosing their Governor, and have thus been deprived *by the State of Kentucky* of their political liberty, and of the benefit of a republican form of government.

Thin Ballots.

Consider what is involved in this ground of contest (Rec. 1, pp. 20 and 34.) It is in substance that in forty named counties of the State (out of a total of 119) the official ballots which are required by law to be, and are in fact, *furnished by the State*, and upon which the voters are required to vote, or not vote at all, *were illegal* because on paper not as thick as the law required; and that therefore the election in all those forty counties—one-third of the State—should be declared void and the people in those counties refused any participation in the election, while the *remainder of the State* is allowed to elect the Governor *for the whole State.*

To have declared the whole election void on the ground that some of the ballots furnished the voters by the State itself were not quite thick enough, and thus to have deprived the people of the benefit of an election fairly won and thus force another trial, would be bad enough; but for the State thus, *on account of its own wrong*, to exclude one-third of the people from voting and at the same time allow the other two-thirds to elect the Governor for the whole State is *simply monstrous.*

The State, *through one of its agencies*, viz., the County Court Clerk, says to the people of these counties: "Here are the ballots upon which, and only upon which, you may vote." The people take them, and vote upon them; they are counted along with the ballots of the other people of the State, and it is found that of all the votes cast in the whole State William S. Taylor has received the highest number by 2,383. Then comes the State, *by another agency*, the General Assembly, and says to these same people: "The ballots we gave you were illegal, therefore we will not count them; you can not be heard to speak through them; and as the majority of the people of the remainder of the State prefer William

Goebel for Governor, we declare him to be Governor of the whole State—your Governor as well as theirs—and you shall have nothing to say upon the subject."

This is not law, it is tyranny; not the election of a Governor by the people of a republican State, but the selection of a chief ruler by an oligarchy. Yet if the people should rise in their might, believing themselves to be free, and resist this insolence in office, they would be suppressed by the Federal government. Will it then suppress the people and at the same time enforce the edict of their oppressors? Will it remember its promise to the State to aid in suppression of domestic violence, but forget its guaranty of republicanism to the people of the State? This promise and this guaranty stand hand in hand, interlocked in the same section of the Constitution. As said before, they are the complements of each other, and to destroy the one and leave the other, must be at the expense either of law or of liberty. And when an action at law is brought in one of the Courts of the State, *another of its agencies*, to enforce this action, this alleged "adjudication," and it is resisted on the ground that it is a violation of the Federal Constitution, and especially of the guaranty of the 4th Section of 4th Article thereof, we submit respectfully that this Court has the power, and it is its duty, to say "the Constitution must be preserved," and this action by the State which is sought to be judicially enforced, must not be enforced.

Again, no one denies that these people who, by this wrong on the part of the State, are refused the right to vote, are qualified voters. They are not refused on account of any wrong on their part, or lack of qualification in them. But *the State*, simply *by its own act*, prohibits from voting those who admitedly were entitled to vote, and proposes by this action to put over them as Governor one who, if they should be allowed to vote, would be defeated. This is a flagrant violation by the State of the Fourteenth Amendment, for

this Court in Minor vs. Happersett, 21 Wall., 162, as we have seen, says:

> "*The right of suffrage when granted will be protected.*
> "*He who has it can only be deprived of it by due process of*
> "*law, but in order to claim protection he must first show*
> "*that he has the right.*" (Page 176.)

The right of suffrage has been granted to the people of these counties; no one denies that the right exists; the Constitution of the United States protects it; the State through the conflicting action of two of its agencies has prohibited its exercise, and now, through another agency, proposes to judicially enforce this wrong upon the people. They appeal to the Constitution of the United States for protection.

Military Intimidation in Louisville.

This remaining ground of contest involves precisely the same principle as the one just considered. The only difference is that a *different agency* of the State was called into play.

This ground is thus set forth in the notice, viz.:

"Second. That the said election held in the county of Jefferson and city of Louisville, on the 7th day of November, 1899, was and is void, because the contestant says that upon that day before the said election, *the Governor of the Commonwealth* unlawfully called the military forces of the State into active service in said city, armed with rifles, bayonets and gatling guns, for the purposes of overawing, intimidating and keeping democratic voters from the polls thereof, and did himself, in violation of the law of the land, go to said city and county the day before said election and assume direction and command of the said military forces,

and ordered and directed them to go, and they did go, in obedience to said order, to the polling places in said city on the day of said election, and thereby many thousands of voters, viz., more than enough to have changed the result of said election, were intimidated and alarmed, and failed and refused to go to the polls, or to vote on said day; that for this cause the said election in the city of Louisville and county of Jefferson was not free and equal, but is void, and the said alleged votes cast thereat should not be counted." (Rec. 1, p. 20.)

For the sake of argument, suppose this to be true. "The Governor of the Commonwealth," the State, acting through its chief executive, is said to have unlawfully called out the military and prevented an election in the county of Jefferson, containing about one-tenth of the voting population of the State. (36,140 out of 397,185—see tabulated vote, Rec. 2, page 176.) The *State*, through the Governor, calls out the military, and then, *on account of that act*, the *State*, through the General Assembly, throws out the vote of the county. Thus the State, by the conflicting action of two of its agencies, and without any wrong done by the people, deprives over 36,000 of its qualified voters of the right to vote, of the right to participate in the election of a Governor. The people of that county of Jefferson constitute, as said above, about one-tenth of the voting population of the State, and they pay about one-fifth of all the taxes of the State; and yet, *by the State's own wrong*, it is proposed to forbid them any voice in the selection of the chief executive officer of the State, and one is seated as Governor who would be defeated if they were allowed to vote.

We will not repeat what we have already said in the next preceding part of the brief, as to the effect of this action. The principle is just the same as that we have heretofore discussed. In each case the action was that of the *State*,

and we may here repeat the words of this Court in *ex parte* Virginia, 100 U. S., 339, announcing the principle which has been so often announced since, viz.:

> "We have said the prohibitions of the Fourteenth "Amendment are addressed to the States. . . . They have "reference to actions of the political body denominated a "State, by whatever instruments or in whatever modes "that action may be taken. . . . Whoever, by virtue of "public position under a State government, deprives "another of property, life or liberty without due process "of law, or denies or takes away the equal protection of "the laws, violates the constitutional inhibition; and as he "acts in the name and for the State, and is clothed with "the State's power, *his act is that of the State.* This must "be so, or the constitutional prohibition has no meaning. "Then the State has clothed one of its agents with power "to annul or evade it." (Page 346.)

So, whether the alleged wrong consisted in the failure to furnish legal ballots or in military intimidation, it was the wrong of the *State*, whereby a large part of the electors of the State, enough to control the result—otherwise there would be no point in the contest—without any wrong on their part and without due process of law, are deprived of the right of suffrage. And therefore the action of the State through another department, *based on this wrongful deprivation*, and not merely declaring the election void and ordering another one, but taking advantage of the wrong to seat one as Governor of the State, who would be defeated but for this wrong, is itself the consummation of the wrong, is infected with its vice, and can not be judicially enforced.

The Court of Appeals of Kentucky has itself very lately and very emphatically, in a brief but pointed opinion, held that "where a considerable proportion of the electoracy has

been deprived of the right of suffrage," whether from a failure to furnish ballots or by force, the result is to nullify the election.

In Hocker vs. Pendleton, 100 Ky., 726 (decided February 23, 1897), the case of an election on the question of local option, the following is the Court's entire opinion, viz.:

"The question whether or not an election has been "'free and equal' in a constitutional sense (Constitution, "section 6) has usually arisen in cases where by force, "intimidation or the like a considerable proportion of "the electoracy has been deprived of the right of suffrage.

"It is clear, however, that an election may be free "from violence, and yet, if from a failure of the officers "to supply ballots, booths, stencils, etc., any large pro- "portion of the electors is prevented from voting, it "can properly be said there has not been a free and "equal election within the meaning of the Constitution.

"In this case there was an attempt to hold an election "on the question of the sale of spirituous liquors in the "town of Hartford. It is confessed that some 60 legally "qualified voters, out of a voting population of less than "175 in the town, were prevented from voting solely "'because the ballots furnished by the clerk gave out "by 9 o'clock on the morning of the election.'

"The Court below properly refused to uphold this "attempted election as valid, and the judgment is, there- "fore, affirmed."

Thus the Court recognizes a principle of rights and justice which is protected by the Federal Constitution.

If any distinction can be drawn between a failure to furnish ballots and furnishing illegal ballots, we are not astute enough to draw it.

On exactly the principle embodied in that case the election now under consideration was nullified if either of the

grounds on which this contest was made was sustained. Yet the General Assembly undertook, on account of the State's alleged wrongful action, not to declare the election void, but to seat as Governor one not elected by the people of the State; and it is this action which the Court is asked to enforce.

This action based on pretended military intimidation is all the more grievous and hard to be borne because the allegation is so absolutely and wholly untrue. Thus far we have made no allusion to the real truth as shown by the record on this subject. It is true there were more than a hundred pages of evidence on the subject, and therefore the answer could not say there was no evidence on the subject; but it does make the following allegation, which the exhibit filed with it shows to be true, viz.:

"Defendants say that on the trial of said contests there was no conflict in the evidence as to the actual movements of the military in the city of Louisville on the said election day. The evidence showed simply this and no more, to-wit, that on said date certain members of the military of the State, all of whom were citizens of Louisville, were held in the Armory in the city of Louisville, but that during the entire period while the vote was being cast said military was *not upon the streets* except when they went, without arms, to dinner to a hotel not more than two squares from the Armory, *passing no voting place in so doing*, and that the only time they appeared upon the streets with arms upon the election day was *between six and seven o'clock in the evening of the election day, which was about three hours after the voting had ceased* and the polls had closed, at which time they were called out to enforce certain orders of the Jefferson Circuit Court for the admission to the polls of inspectors whose right and duty it was to witness the count of the vote, and which orders of Court were being flagrantly violated;

but that even then the said military, when thus called out found all the polls to which they went *had been closed*, and that the duties of the officers had been completed, except in the case of *two polls*, as to which they found that the aforesaid inspectors had already been admitted, before the military got there, and which polls therefore they did not enter, and at which they disturbed no one at all.

"Not a single witness testified before said Contest Committees that he knew of a single person who had been kept from voting in the city of Louisville by reason of the presence of said military.

"Furthermore it was shown in evidence, and not contradicted, that the presence of the military in the city of Louisville on election day was not an unusual thing, but that for several years past it had been a common practice to have a military force held in readiness in the city of Louisville on election days for the purpose of preserving order and protecting property, which has been done both on occasions when Democrats were elected and when Republicans were elected." (Rec. 1, p. 36.)

It is true there was evidence of great excitement preceding the election, of wild newspaper talk on both sides, and of the admitted swearing in of a large number of special police by the democratic city officers; and some witnesses expressed the opinion that some people were intimidated. But no witness knew of anybody that was intimidated, or had ever heard of anybody that was intimidated. It was all simple talk of what was "in the air." The actual facts, however, as to the military were as stated in the answer, and as shown by the testimony of Major Gray, a witness for the contestants. (Rec. 2, p. 129.) And, as to the actual election, the following testimony of the democratic Mayor, Charles P. Weaver, the first witness called for the contestants, is a fair sample of what all stated, viz.:

"*Q.* You went, as I understand, all over the city? *A.* As far as I could go. *Q.* What time of day was that? *A.* I

left the city hall about 11 o'clock. *Q.* What time did you return? *A.* About half-past 4. *Q.* You saw no soldiers? *A.* No. *Q.* On the streets at all? *A.* No, sir. *Q.* Nothing of the kind? *A.* Nothing. *Q.* The polls closed at 4 o'clock, did they not? *A.* At 4 o'clock. *Q. I understand you to say that it was one of the most peaceful, quiet elections ever held in the city of Louisville? A. Yes, sir.*" (Rec. 2, p. 18.)

Even if we were dealing with the action of the Committee which had this evidence before it, or if the evidence had been returned to the Assembly by the Committee, and we were under such circumstances dealing with action of the Assembly, a finding on this record that the people of Louisville were intimidated by the military would come within the language of this Court, heretofore quoted, in C., B. & Q. R. R. Co. vs. Chicago, 166 U. S. 226, viz.:

> "Its judicial authorities may keep within the letter of "the statute prescribing forms of procedure in the courts, "and give the parties interested the fullest opportunity to "be heard, and yet it might be that its final action would "be inconsistent with that amendment. In determining "what is due process of law, regard must be had to sub-"stance, and not to form." (Page 234.)

CONCLUSION.

We will not attempt any resume of the argument; we have attempted so to divide it as not to confuse it. We simply insist that the pretended "adjudication," which is pleaded by Mr. Beckham as the foundation of his action whereby he seeks to take from William S. Taylor and John Marshall the offices to which they certainly had the admitted *prima facie* right, and whereby he seeks to make himself the Governor of Kentucky and the chief magistrate of her peo-

ple, is an absolute nullity, that it was entered, or made, in violation of rights secured both to William S. Taylor and to John Marshall and to the people of Kentucky by the Constitution of the United States; and that when he comes into court asking for the judicial enforcement of this arbitrary edict, the courts of the land, of which this is the supreme head, should decline to enforce it.

We feel that in this case is involved the question of whether we are political freemen or political serfs; whether we have in Kentucky a republic or an oligarchy; whether we vote by right secured by law, or by grace of a few men. It matters not that these men may themselves have been elected. They were given no commission by the people to select a Governor for them; and as said by Mr. Jefferson, speaking for himself and his compatriots: "An elective despotism was not the government we fought for."

We have been denied republicanism, the principal has failed in its duty, and we call on the guarantor to make good its guaranty. We ask for the protection of liberty and property against "the arbitrary exercise of the powers of government".

April 24, 1900.

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APPENDIX.

Kentucky Statutes, Sec. 1596 A, Sub. 8.

8. *Contested election of Governor and Lieutenant-Governor.* When the election of a Governor or Lieutenant-Governor is contested, a board for determining the contest shall be formed in the manner following:

First. On the third day after the organization of the General Assembly which meets next after the election, the Senate shall select by lot three of its members, and the House of Representatives shall select by lot eight of its members, and the eleven so selected shall constitute a board, seven of whom shall have power to act.

Second. In making the selection by lot the name of each member present shall be written on a separate piece of paper, every such piece being as nearly similar to the other as may be. Each piece shall be rolled up so that the name thereon cannot be seen, nor any particular piece be ascertained or selected by feeling. The whole so prepared shall be placed by the clerk in a box on his table, and, after it has been well shaken and the papers therein well intermixed, the clerk shall draw out one paper, which shall be opened and read aloud by the presiding officer, and so on until the required number is obtained. The persons whose names are so drawn shall be members of the board.

Third. The members of the board so chosen by the two Houses shall be sworn by the Speaker of the House of Representatives to try the contested election, and give true judgment thereon, according to the evidence, unless dissolved before rendering judgment.

Fourth. The board shall, within twenty-four hours after its election, meet, appoint its chairman and assign a day for hearing the contest, and adjourn from day to day as its business may require.

Fifth. If any person so selected shall swear that he can not, without great personal inconvenience, serve on the board, or that he feels an undue bias for or against either of the parties, he may be excused by the House from which he was chosen from serving on the board, and if it appears that the person so selected is related to either party, or is liable to any other proper objection on the score of its partiality, he shall be excused.

Sixth. Any deficiency in the proper number so created shall be supplied by another draw from the box.

Seventh. The board shall have power to send for persons, papers and records, to issue attachments therefor, signed by its chairman or clerk, and issue commissions for taking proof.

Eighth. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election shall be ordered to fill the vacancy; *Provided* The first two years of his term shall not have expired. Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.

Ninth. No decision shall be made but by the vote of six members. The decision of the board shall not be final nor conclusive. Such decision shall be reported to the two

Houses of the General Assembly, for the future action of the General Assembly. And the General Assembly shall then determine such contest.

Tenth. If a new election is required it shall be immediately ordered by proclamation of the Speaker of the House of Representatives to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

Eleventh. When a new election is ordered or the incumbent adjudged not to be entitled, his powers shall immediately cease, and, if the office is not adjudged to another, it shall be deemed to be vacant.

Twelfth. If any member of the board wilfully fails to attend its sessions, he shall be reported to the House to which he belongs, and thereupon such House shall, in its discretion, punish him by fine and imprisonment, or both.

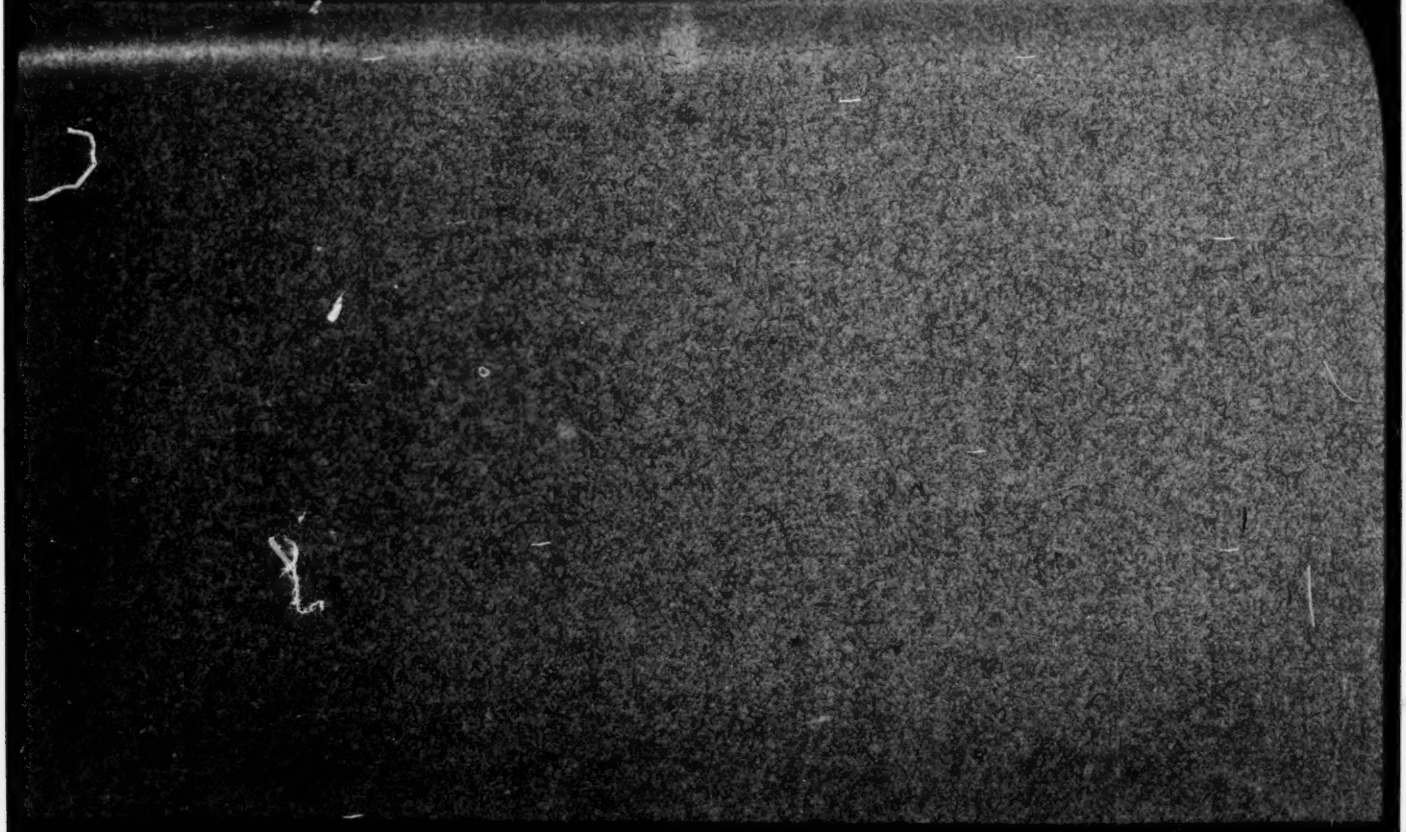
Thirteenth. If no decision of the board is given during the then session of the General Assembly it shall be dissolved, unless by joint resolution of the two Houses it is empowered to continue longer.

Supreme Court of the United States.

WILLIAM S. TAYLOR, &c., Plaintiffs in Error,
against
J. C. W. BECKHAM, &c., Defendants in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

W. O. BRADLEY,
Counsel for Plaintiffs in Error.



SUPREME COURT OF THE UNITED STATES

WILLIAM S. TAYLOR, &c., Plaintiffs In Error,

AGAINST

J. C. W. BECKHAM, &c., Defendants In Error.

BRIEF FOR PLAINTIFFS IN ERROR.

I. STATEMENT OF THE CASE.

More than a century elapsed in Kentucky before there was any contest of the elections of Governor and Lieutenant-Governor; and it is probable that such a contest would never have occurred but for the passage of the Goebel Election Bill, which has indeed proven the "fruitful source of all our woe."

That law enabled the General Assembly to, and it did, elect all the State Election Commissioners from the Democratic party. It enabled those commissioners to appoint all the county commissioners from their own political party, which was done in some instances, not more than one commissioner of the three having been appointed from the Republican party in any instance. These three county commissioners were in turn empowered to appoint the four election officers in each voting precinct equally from the two parties. In many localities all four of these officers were selected from the one party; in many others as many as three, while in some they were

equally divided, the Republicans, however, being chosen over the objections of the party organization.

In the appointment of county commissioners and precinct officers Republicans selected for their qualification and character by their party organization were generally ignored and others selected who were not qualified, or who could be controlled to act against their party. Many officers were appointed from both parties, who were of bad character, and the protests of the Republican organization were universally unheeded. Removals of Republican officers were indulged in lavishly the day preceding the election, and others appointed who would do the bidding of the democracy, in order that the machinery should work harmoniously in one direction. Although the statute required all precinct officers to be examined as to qualification, they were not examined in as many as one-half dozen counties of the State. In many localities no Republican inspector was allowed to be present at the count, the consequence of which was that thousands of votes cast for plaintiffs in error were counted for the opposition. In short, the election did not have even the semblance of decency or fairness. These facts were shown by the proof, but in many instances, notably in the county of Kenton, the home of Senator Goebel, the contest board, on demurrer, struck out all the charges, which demurrer admitted their truth. The court, by the most casual glance at the notice of counter contest, connected with the demurrer of contestants thereto, will become convinced that there never was in any State of the Union such a saturnalia of corruption.

Notwithstanding all the machinery was in the hands of one party, and was operated with conscienceless expertness and dispatch, Taylor and Marshall were elected by more than two thousand votes, and this, too, when the count in every county of the State, and in the State at large, was controlled by the Democratic party.

The State Board having issued certificates to the Republican candidates, a contest was inaugurated by the appellees, upon ten grounds. (Volume 1, page 19.)

Of the ten grounds, number one, two three and four are

directed at forty-four counties of the State, and it is alleged in the notice rendered the election void in those localities which, if true, would have necessitated a new election and prevented the deciding of the contest in favor of Mr. Goebel.

Of the remaining six counts, there was no attempt made to sustain numbers five, seven, eight and nine, and there was a complete failure as to numbers six and ten. Neither was any effort made to sustain number four. It will appear on investigation that the notice of contest not only precludes jurisdiction as to the points investigated, but fails to state the jurisdictional fact necessary to uphold it.

It will be shown that the Board and the General Assembly had no jursidiction to pass upon the questions at issue in one, two ~~and three~~, the only grounds that an attempt was made to substantiate, and upon which the decision of the contest was based. The only ground of contest specified in the statute governing the jurisdiction of the Board and of the Legislature which could have been presented was, and is, who received the highest number of legal votes given, and nowhere in the notice of contest was it ever claimed by Goebel or Beckham that they had received such vote.

The demurrer admits that the members of the Board were drawn by trick and device so that out of one hundred and thirty-eight members, fifty-three of whom were Republicans, and ten of whom were Democrats opposed to the contest, the Governor's Board was composed of ten Goebel Democrats and one Republican, and the Lieutenant-Governor's Board of nine Goebel Democrats and two Republicans. (1 Volume Record, pages 24-25, 59.) It is further admitted by demurrer that five of these members had attended a party meeting, in which the contest was advised and agreed upon; two had contests pending against them, in which the points at issue in this case were involved; one had a bet on the result of the election, which was being held up to await the decision of the Board; two had expressed in substance the opinion that contestants should succeed whatever might be the majority against them; another was under charge of felony for obtaining money under false pretenses, and that affidavits were filed with the Chair-

man of each Board, and also in both houses, making these statements, and objecting to said persons acting, which affidavits were ignored. (Record, 59.)

It is likewise admitted that only eight working days were allowed contestees to prepare to meet the issue presented in forty-five counties of the State, and to present their own case by counter contest, involving a large majority of the counties in the State. (1 Volume, page 29.) At the conclusion of contestee's testimony contestants were allowed to introduce evidence in chief, under the pretense of rebuttal, which is admitted to have been false, and time was refused contestees to meet and contradict the same, and hundreds of contestee's witnesses were turned away because of a refusal of reasonable time in which to enable them to testify. (Volume 1, pages 31-60.) It is further admitted that the Board of Contest refused to allow the contestees to argue the case, but made their report without argument. (Volume 1, page 32.)

It is shown by the journals, and so alleged in appellees' petition, that a majority of all the members in the Senate did not vote in favor of the contestants. (Volume 1, pages 40-1-2-3); that the report of the Contest Board was adopted by resolution, which resolution was never presented to the Governor for his signature, and that the proof taken by the Board was not filed with or considered by either house on the adoption of the report. It is charged in the pleadings, and admitted by demurrer, that there was in fact no public meetings of either house on the 31st of January or 2d of February; that the Senate had no presiding officer; that no notice of any such meeting was given, no one of those who opposed the report of the committee present, and that all the entries made on the journals concerning these matters were false and fraudulent, and made and entered in execution of a conspiracy between the clerks and members of the two houses.

And yet, in the face of all this infamy, a proceeding where every legal right has been disregarded and trampled under foot, where the will of the people has been openly defied, a

record whose every page is marked with the trail of the serpent and the mailed hand of the robber, we are told that in this free Republic there is no relief, but that every power is paralyzed and every tribunal silenced by the acts of this fraudulent, conscienceless and corrupt Legislature.

II. THE JURISDICTION OF THIS COURT.

In discussing whether or not this court has jurisdiction of the writ of error attention will be specifically directed to the grounds relied upon for reversal, which, taken in connection with the pleadings, the opinion of the Kentucky Court of Appeals and the Constitutions of the State and Nation demonstrate conclusively, the power of this court to break the chains forged in the white heat of corruption and party hate, which now bind not only the parties complaining, but the people of a Commonwealth as well.

The only authority possessed by the two houses to try such contests will be found in section 90, Constitution of Kentucky, which provides that—

> "Contested elections for Governor and Lieutenant-Governor shall be determined by BOTH houses of the General Assembly, *according to such regulations as may be established by law.*"

Under this section the election law of Kentucky, containing the regulations for determining such contested elections, defining the questions to be investigated and the jurisdiction of the Legislature, was adopted.

In determining the contests both houses are bound by these regulations, for they can act alone in accordance with them. It will be observed that the power conferred on the Legislature is not absolute, but subject to limitation in this, that it is to be exercised only under the regulations established by law.

1st. It is contended that under these regulations that the grounds on which the Contesting Board and the two houses acted in settling the contest were not embraced in the regu-

lations established by law, but were entirely outside the same, in consequence of which the action of the Board and the two houses was without any jurisdiction, and hence of no force or value. If it be contended that the tribunal thus selected had the right under the State Constitution to arbitrarily and without right deprive a citizen of his rights, privileges, immunities, property or liberty, then the State Constitution is in conflict with the 14th article of amendment to the Federal Constitution, and is a nullity.

Conceding, for the sake of argument, that the action of the two houses would be final, so long as it was confined to the execution of the powers conferred upon them, yet if they went outside the established regulations they acted without jurisdiction, and such proceeding was absolutely void.

In order to constitute due process of law there must have been:

1st. A tribunal clothed with jurisdiction of the subject and person.

2d. The tribunal having only a special jurisdiction, the notice of contest must have alleged and plainly set out the jurisdictional facts.

3d. The investigation must of necessity have been confined within the limitations fixed by the statute.

4th. The members of the Contest Board must have been fairly drawn.

5th. All members of the Board who were interested or partial should have been excused.

6th. Reasonable time must have been given contestees to prepare their cases and introduce their evidence.

7th. Contestees should have been afforded an opportunity to argue the case.

8th. The two houses before determining the contest must have read the evidence.

9th. The two houses in determining the contest must have acted in conformity to the law.

If the tribunal acted without jurisdiction, or if it failed, for any reason, to afford due process of law; and if by its action the rights, privileges or immunities of any citizen of the

United States has been abridged, or he deprived of his liberty, rights or property without due process of law, either by the law or the improper and unauthorized manner of its enforcement, the Constitution of the United States has been violated; and if it appears that the Federal question was raised and passed upon in express terms or by necessary effect, the jurisdiction of this court can not for a single moment be questioned.

That the Federal question was not only presented in the pleadings, but decided adversely to the plaintiffs in error by the majority opinion of the court below (1 Volume Record, page 153), there can be no question; and that plaintiffs in error could not have been divested of their offices except by disregarding a plain provision of the National Constitution there can be no doubt.

Section 709, United States Statutes, provides, among other things, that—

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question * * * the validity of a statute *or an authority exercised under any State*, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; *or where any title, right, privilege or immunity is claimed under the Constitution, and the decision is against the title, right, privilege or immunity especially set up or claimed* may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

It is entirely immaterial to the question of jurisdiction whether or not an office is property. An office is certainly both a right and a privilege of citizenship.

The Kentucky Court of Appeals held, in Page v. Hardin, 8 B. Mon., 672, that an office "is a valuable right and interest." Again, in Commonwealth v. Jones, 10 Bush, 735, it held that the section of the Constitution depriving one who has fought a duel of the right to hold an office:

> "In effect dispossesses him of a right which the Su-

preme Court of the United States terms inalienable (4 Wall, 321), takes from him 'rights, privileges and immunities' to which he was theretofore entitled, and strips him of one of the most valuable attributes of citizenship. The word 'deprived' is used in this section in the same sense in which it is used in section 12 of the Bill of Rights and in the fifth article of amendment to the Federal Constitution."

Said this court in Unites States v. Missouri, 4 Wall., 321:

"The theory upon which our political institutions rest is that all men have certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions. are alike open to every one; and that in the protection of these rights all are equal before the law."

Again, at page 320, it is said:

"We do not agree with the counsel of Missouri that 'to punish one is to deprive him of life, liberty or property, and that to take from him anything less than these is no punishment at all.' * * * He does not include under 'liberty' freedom from outrage on the feelings as well as restraints on the person. He does not include under 'property' those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors. The deprivation of any rights, civil or political, previously enjoyed may be punishment; disqualification from office may be punishment, as in cases of conviction upon impeachment."

It is true that in the present opinion the court below decides that an office is not property; but they seem to have forgotten, at any rate failed to mention, the cases in 2 Duvall and 81 Kentucky, wherein they have announced a contrary doctrine. As these decisions have not been expressly overruled or explained in the opinion in this case, we may assume that the court below is on record on both sides of the question, the de-

cided weight of authority being that an office is property. In the first-named case (Standiford v. Wingate, 2 Duvall, 445) the court forcibly draws the distinction between an office created by the Constitution, the term and salary of which may not be altered by the Legislature, and one created by the Legislature. But even as to the latter it is held that they are "in a peculiar sense and to a qualified extent property." Say the court, the Constitution does not give fixidity to the legislative offices, nor, consequently, stability to their tenure, and the sovereign people when they made their organic law were the best and only judges of the policy of such a rule, and their action should not be circumscribed by speculation. Continuing, the court declares:

> "The value of the qualified property in an office consists of its salary and its duration; and nothing is more conclusively adjudged than that neither element is secured by contract. And it is self-evident that they both depend on the popular will, *when by their Constitution the people have not surrendered their own power over them.*"

The inevitable conclusion from the opinion is that a Constitutional office, which may not be repealed or the salary altered, *is property*, the people having surrendered their power over it.

The present Constitution of Kentucky provides that the salary of the offices now in contest can not be increased or diminished during the term, and in addition creates both offices. Not only so, the Governor is furnished during his term with a valuable residence for himself and family.

In Bailey v. Commonwealth, 81 Ky., 401-2, the court below said:

> "This objection involves the startling doctrine that a public office is property, and that the acceptance of a public office by a citizen who has been elected thereto by the people is a contract between him and them, or the State, which so insures to him the fees and compensation

fixed by law for his official services that they can not be diminished during his incumbency.

"*This rule is not applicable to any public office unless the Constitution so provides.* The Constitution in order to render the judiciary independent, does provide that the compensation of the judges of the Appellate and Circuit Courts shall not be diminished during the time for which they shall have been elected; but no such provision can be found in the Constitution relative to clerks, marshals and other ministerial officers."

But we are told on the strength of the Sawyer case (124 U. S.) that the Supreme Court has held that an office is not property; and hence the Federal question presented in this case is untenable.

In that case the court was asked, on a writ of habeas corpus, to discharge the mayor and members of the city council of Lincoln, Nebraska, from custody on contempt proceedings for an alleged refusal to obey an injunction issued by the United States Circuit Court, on a petition of Parsons as police judge of Lincoln, against the mayor and council to prevent them from removing him from his office, on the ground that due process of law had not been afforded him. In passing upon the questions at issue the majority of the court, through Judge Field, held:

1st. The jurisdiction of a court of equity, unless enlarged by express statute, is limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment, or the pardon of crimes or misdemeanors, or over the appointment and removal of public officers. (Page 210.)

2d. That a court of equity has no jurisdiction over the appointment and removal of a public officer, but the jurisdiction to determine the title to a public office belongs exclusively to the courts of law, and is exercised either by certiorari, error or appeal; or by mandamus, prohibition, quo warranto or information in the nature of quo warranto. (Page 212.)

3d. At page 220 the court emphatically decides:

"If a person claiming to be such an officer is by the

judgment of a court of the State, either in appellate proceedings or upon a mandamus or quo warranto, denied any right secured to him by the Constitution of the United States, he can obtain relief by a writ of error from this court."

And this statement is made in the discussion of a case where a citizen was attempted to be deprived of an office.

At page 220 the court says:

"The reasons which preclude a court of equity from interfering with the appointment or removal of public officers of the government from which the court derives its authority apply with increased force when the court is a Court of the United States and the officers in question are officers of a State. *If a person claiming to be such officer is, by the judgment of a court of the State, either in appellate proceedings or upon a mandamus or quo warranto, denied any right secured to him by the Constitution of the United States, he can obtain relief by a writ of error from this court.*"

Nowhere is it expressly decided in that case that an office is not property, but the whole effect of the decision is, while denying equitable jurisdiction, that in actions concerning removal from office the Supreme Court has jurisdiction, where the matters are presented on writ of error.

There is a difference of opinion in many of the States as to whether an office is or not property. It is not necessary, however, to enter into a discussion of this matter.

In Kennard v. Louisiana, 92 U. S., 480, the court, without questioning its jurisdiction to pass on the issue, and without intimating that an office was not property, or, if so, that the court had no jurisdiction, decided that due process of law was provided in Louisiana, and no complaint could on that account be made.

In Foster v. Kansas, 112 U. S., 201, the Kennard case was approved.

In Wilson v. North Carolina, 169 U. S, 594, the Kennard

case is approvingly cited, and the court passed upon the question, on writ of error, as to whether or not due process of law was afforded Wilson when deprived of his office.

In that case the only reference to an office as property is (595) that "the Supreme Court of North Carolina held that an office was generally, and in a certain restricted sense, the property of the incumbent, and that the incumbent, in taking it, holds it subject to the act creating it, which binds him by all its provisions, all of which were held to be valid." But in the Wilson case the court said, page 596: "We should be very reluctant to decide that we had jurisdiction in such a case, and thus in an action of this nature to supervise and review the political administration of a State government by its own officials and through its own courts. The jurisdiction of this court would only exist in case there had been, *by reason of the statute and proceedings under it, such a plain and substantial departure from the fundamental principles upon which our government is based that it could with truth and propriety be said that if the judgment were suffered to remain the party aggrieved would be deprived of his life, liberty or property in violation of provisions of the Federal Constitution.*"

In the Kennard case a hearing was granted, and it does not appear that ample time was not given, for only a legal proposition was presented.

In the Wilson case the office was a legislative office subject to repeal. True, the Governor had removed the commissioner without giving his reason or citing him to appear; but the effect of his order was only to suspend the commissioner until the meeting of the General Assembly, when he was entitled to be fully heard.

As already shown by the decisions, it is not necessary that an office should be property in order to invest this court with jurisdiction. It is a right, privilege and immunity. Rights, privileges and immunities spring from the liberty of the citizen and are a part of that liberty. Said this court in Munn v. Illinois, 94 U. S., 123, through Mr. Chief Justice Waite:

"The Constitution contains no definition of the word deprive, as used in the fourteenth amendment. To determine its signification, therefore, it is necessary to ascertain the effect which usage has given it when employed in the same or a like connection. While this provision of the amendment is new in the Constitution of the United States, as a limitation upon the powers of the States, it is old as a principle of civilized government. It is found in Magna Charta, and, in substance if not in form, in nearly, or quite, all the Constitutions that have been from time to time adopted by the several States of the Union.

"By the fifth amendment it was introduced into the Constitution of the United States as a limitation upon the powers of the national government, and by the fourteenth as a guarantee against *any encroachment upon an acknowledged right of citizenship by the Legislature of the States.*"

The language of the fourteenth amendment to the Federal Constitution, taken in connection with section 709, supra, when applied to the issues presented in the pleadings and passed upon by the court below, admit of no doubt as to the jurisdiction of this court to hear and determine the writ of error.

The amendment provides:

* * * "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law."

Said this court in the well-considered opinion, delivered through Mr. Justice Story, of Cromwell v. Randall, 10 Peters, 398, after reviewing the cases decided up to that time:

"The period seems now to have arrived in which the court should, upon a full view of all the cases, with a view to close, if possible, all future controversy on the point, reaffirm the interpretation which they have constantly maintained. It is, that to bring a case within the

25th section of the judiciary act it must appear on the face of the record, first, that some one of the questions stated in that section did arise in the State court; second, that the question was decided by the State court as required in the same section; third, that it is not necessary that the question should appear on the record to have been raised, and the decision made in direct and positive terms, ipsissimus verbis; but that it is sufficient if it appears and by necessary intendment the question must have been raised and must have been decided in order to have induced the judgment; fourth, that it is not sufficient to show that a question might have arisen or been applicable to the case unless it is further shown, on the record, that it did arise and was applied by the State court to the case."

In Gray v. Coan, 154 U. S., 588, this court held, Mr. Chief Justice Chase delivering the opinion:

"To give this court jurisdiction over the judgment of the highest court of a State brought here by writ of error, it must appear that some question under the 25th section of the judiciary act was made by the pleadings or passed upon by the court."

Said Mr. Justice Miller, speaking for the court, in Bridge Proprietors v. Hoboken Co., 1 Wall, 116-143:

"The court must be able to see clearly from the whole record that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him was denied."

See Choteau v. Gibson, 111 U. S., 200; Murdock v. Memphis, 20 Wall, 590, 636; Brown v. Colorado, 106 U. S., 95-97; Detroit Railway Co. v. Guthard, 114 U. S., 135.

In Byrne v. State of Missouri, 8 Peters, 42, Mr. Chief Justice Marshall, speaking for the court, said:

"The pleadings in the cause bring the question, whether

the act of the State of Missouri, by virtue of which the certificates which form the consideration of the writing obligatory, on which the judgment of the State court was rendered, be constitutional or not, directly and plainly before the court, and the decision of the State court was in favor of its validity. Consequently the case is within the 25th section of the judicial act; and the only question before this court is, did the State court err in pronouncing that judgment?"

Said this court, through Mr. Chief Justice Fuller, in Clark v. Pennsylvania, 128 U. S., 397:

> "It is essential that the record should disclose not only that the alleged right, privilege or immunity was specially set up and claimed in the court below, but that the decision was against the right so set up or claimed."

In San Francisco v. Itsell, 138 U. S., 66, this court announced the rule through Mr. Justice Gray:

> "This court has no jurisdiction to review a judgment of the highest court of a State unless a Federal question has been, either in express terms or by necessary effect, decided by that court against the plaintiff in error."

In a recent decision, rendered March 12, 1900, this court said, Mr. Justice Brown speaking for the court (Illinois Central R. R. Co. v. Chicago):

> "In determining the existence of a Federal question it is only necessary to show that it is set up in good faith, and is not wholly destitute of merit."

Said Mr. Chief Justice Marshall, delivering the opinion of the court, in Cohens v. Virginia, 6 Wheaton, ~~114.~~ 404

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary can not, as the Legislature may, avoid a measure because it approaches the confines of the Constitution. We can not pass it by

> because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of a jurisdiction if it is given than to usurp that which is not given. ***The one or the other would be treason to the Constitution.*** Questions may occur which we would gladly avoid; but we can not avoid them."

The pleadings allege that the Contest Board and the two houses acted without jurisdiction; that the board was unfairly drawn, was interested and partial, as stated; that reasonable time was not allowed plaintiffs in error to prepare their case or introduce their testimony, and that they were denied an argument; that not only were the rights, privileges and immunities of plaintiffs in error abridged, but that they were deprived of same, together with their property and liberty, not only without due process, but without any process of law; that the action of the two houses was the exercise of absolute, arbitrary power, unauthorized by constitutional authority, the denial of all rules of procedure known to the courts, without any testimony and in violation of the Constitution of the State and Nation.

The Court of Appeals, in the majority opinion, in deciding the case against plaintiffs in error, necessarily held that due process of law had been afforded, and that the Constitution of the United States had not been violated in any way. But they specifically refer to our contention and hold that the action of the Legislature under the State Constitution did not abridge any of the rights, privileges or immunities of plaintiffs in error, or deprive them of their property without due process of law; and, consequently, that the fourteenth amendment to the Federal Constitution has not been violated.

Doubtless the opinion of this court in Luther v. Borden, 7 Howard, will be relied upon. An examination of the case will show that it has no bearing on the question in issue. In that instance two State Constitutions were claimed to have been adopted and two sets of officers elected. The State court had decided in favor of one of these governments and the President

had recognized one of them, and was taking steps to quell domestic violence. This court declined to interfere upon the ground that the question presented was purely political.

There is no contention here concerning dual governments in Kentucky. The only question presented is whether, under an amendment to the Constitution made long after the decision in Luther's case, a citizen of a State has been deprived of his rights, privileges, immunities or liberty without due process of law.

The sole question in the Luther case was whether the State of Rhode Island, through its sovereign people, had changed their old Constitution by adopting a new one.

As we have already seen, in Wilson v. North Carolina, 169 U. S., 595, this court held, that while it would be reluctant to decide that it had jurisdiction and thus to supervise the political administration of a State government by its own officials and through its own courts, still such jurisdiction would exist if the proceeding was in violation of the fourteenth amendment.

In Scott v. McNeal, 154 U. S., 45, this court, through Mr. Justice Gray, said:

> "Upon a writ of error to review the judgment of the highest court of a State, upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's construction of a statute of the Territory, or of the State, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another State. In every such case this court must decide for itself the true construction of the statute."

Citing Huntington v. Attrill, 146 U. S., 657, 683, 684; Mobile & Ohio Railway v. Tennessee, 153 U. S., 486-492 to 495.

III. THE DENIAL OF DUE PROCESS OF LAW.

In determining whether or not due process of law was afforded the contestant, attention will first be directed to the question as to whether the legislative department is affected by the provisions of the fourteenth amendment:

Said this court in Scott v. McNeal, 154 U. S., 45, Mr. Justice Gray speaking for the court:

> "The fourteenth article of amendment of the Constitution of the United States * * * ordains 'nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to *all acts of the State, whether through its legislative, its executive or its judicial authorities.*
>
> "Virginia v. Rives, 100 U. S., 313, 318; Ex parte Virginia, 100 U. S., 339-346; Neal v. Delaware, 103 U. S., 370-397, and the first one, as said by Chief Justice Waite, in United States v. Cruikshank, 92 U. S., 542, 554, repeating the words of Mr. Justice Johnson, in Bank of Columbia v. Okeley, 4 Wheat., 235-244, was intended to secure the individual from the aribtrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

In C., B. & Q. R. R. Co. v. Chicago, 166 U. S., 234, Mr. Justice Harlan, speaking for the court, said:

> "These principles were enforced in the recent case of Scott v. McNeal, 154 U. S., 34, in which it was held that the prohibitions of the fourteenth amendment extended to all acts of the State, whether through its legislative, its executive or its judicial authorities."

It is confidently contended that the two houses had no jurisdiction to try the contests under the statute, and even if they had, they had no jurisdiction under the pleadings.

If they acted without jurisdiction, it follows that due process of law was denied to the plaintiffs in error.

Said Mr. Justice Gray, speaking for the court, in Scott v. McNeal, 154 U. S., 46:

> "No judgment of a court is due process of law if rendered without jurisdiction in the court."

Suppose that the Constitution and statute of Kentucky were silent concerning the right to contest, or manner of contesting, the elections of Governor and Lieutenant-Governor, would it be contended for a moment that the Legislature would have the right to entertain or decide such a contest? Surely not. Then if authority be given in the State Constitution to hear and decide such contests, with the express limitation that such authority must be exercised "according to regulations established by law," and the Legislature acts outside and independent of those regulations, and assumes to decide the contest upon grounds not embraced in the regulations, its action is as illegal and void as if no authority whatever had ever been granted it concerning the subject. As forcibly said by Mr. Chief Justice Marshall, in Cohens v. Virginia, supra, "the court has no more right to decline the exercise of a jurisdiction if it is given than to usurp that which is not given. The one or the other would be treason to the Constitution."

As we have seen, section 90, Kentucky Constitution, does not confer absolute and unconditional authority upon both houses to determine contested elections of Governor and Lieutenant-Governor, but provides the distinct condition that such determination shall be had "*according to such regulations as may be established by law.*"

What was intended by this limitation? Was it intended that the Legislature itself should be sole judge of whether it complied with the Constitution? If so, why place a limit upon its power to act? Surely the makers of the Constitution meant something by the insertion of this limitation. In Potter's Dwarris on Statutes and Constitutions, 842, it is well asked, "What would avail restrictions upon legislative power without some constitutional mode of enforcing their observance?"

After asking the question, the author proceeds to show that the power of enforcement is in the judiciary.

These regulations are established in section 8, act of March, 1898 (page 643, Kentucky Statutes, edition of 1899), which was enacted over the Governor's veto, and is known as the Goebel law. The portions of that law bearing on the questions at bar are as follows:

"Section 8. When the election of a Governor or Lieutenant-Governor is contested, a board for determining the contest shall be formed in the manner following:

"1st. On the third day after the organization of the General Assembly, which meets next after the election, the Senate shall select, by lot, three of its members, and the House shall select, by lot, eight of its members, and the eleven so selected shall constitute a board, seven of whom shall have power to act

"2d. In making the selection by lot, the name of each member present shall be written on a separate piece of paper, every such piece being as nearly similar to the other as may be. Each piece shall be rolled up so that the name thereon can not be seen, nor any particular piece be ascertained or selected by feeling. The whole so prepared shall be placed by the clerk in a box on his table, and after it has been well shaken and the papers therein well intermixed, the clerk shall draw out one paper, which shall be opened and read aloud by the presiding officer, and so on until the required number is obtained. The persons whose names are so drawn shall be members of the board.

"3d. The members of the board so chosen by the TWO houses shall be sworn by the Speaker of the House of Representatives to *try* the contested election and give *true judgment according to the evidence* unless dissolved before *rendering judgment.*

"4th. The board shall, within twenty-four hours after its election, meet, appoint its chairman and assign a day for hearing the contest, and adjourn from day to day as its business may require.

"5th. If any person so selected shall swear that he can not, without great personal inconvenience, serve on the

board, or that he feels an undue bias for or against either of the parties, *he may* be excused by the house from which he was chosen from serving on the board; and if it appears that the person so selected is related to either party, *or is liable to any other proper objection* on the score of his partiality, he shall be excused.

"6th. Any deficiency in the proper number so created shall be supplied by another drawn from the box.

"7th. The board shall have power to send for persons, papers and records, to issue attachments therefor, signed by its chairman or clerk, and issue commissions for taking proof.

"8th. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the board.

"Where the person returned is found not to be legally qualified to receive the office at the time of the election, a new election shall be ordered to fill the vacancy: Provided, The first two years of his term shall not have expired.

"*Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.*

"9th. No decision shall be made but by the vote of six members. The decision of the board shall not be final nor conclusive. Such decision shall be reported to the TWO HOUSES of the General Assembly, for the future action of the General Assembly. And the General Assembly shall then determine such contest."

This is all the law on the subject applicable to the present controversy.

The court will observe that the law governing proceedings before the County Contesting Boards (section 13 of the act of 1898, page 650, Kentucky Statutes) is governed by the same rules as to jurisdiction in contested elections as are provided in contests for Governor and Lieutenant-Governor. This has been the law in Kentucky for more than half a century. (See Revised Statutes, section 8, article 7, chapter 32; act 1851,

page 92, Acts 1850 and 1851. Under the statute, the powers of the board are set forth in plain and simple words (subdivision 8):

1st. To settle a tie vote by lot.

2d. To investigate whether the person elected was qualified to receive the office at the time of the election.

3d. Whether another than the person returned received the highest number of legal votes given.

These *alone* are the powers conferred. Neither the board, nor the two houses had any right to take into consideration votes which were not actually cast. They had no authority to declare the election void by reason of thin ballots or the use of military force; or for such reason to disfranchise all the voters in the localities complained of in order to declare that in the remaining portions of the State contestants received the highest number of legal votes given, and were, therefore, entitled to the offices. But upon these grounds, and no other, for the others amounted to nothing and were totally unsustained, knowing that they had no right to give any such reason for their judgment, and that they had no jurisdiction, they did not undertake to explain how they arrived at their conclusion.

No data is given upon which it was made. Indeed no reasonable data could have been given. Hence the board concluded it was best to give no reason, but to decide flatly and defiantly that the contestants had received the highest number of votes and trust to the approval of a packed tribunal to endorse their work.

Even had the objection to thin ballots and military interference been sustained, the only result would have been to render the election void and the Circuit Court, and not the Board of Contest, would have had jurisdiction to so declare.

In order that the powers of the board may be understood, as viewed by the Kentucky Court, attention is called to the decision in Leeman v. Hinton, 1 Duvall, 38. That opinion stands as the proudest monument to the learning, sagacity and impartiality of Justice Bullitt, who, though an intense sympathizer with those who were in rebellion against the govern-

ment, was able to rise above all partisan feeling, and give fair and legitimate construction to the laws of his State.

The Board of Contest in the Leeman case adjudged that he was not entitled to the office because, the election was held in each precinct under the supervision of military officers and a majority of the voters intimidated and overawed by such military authorities, and hence that said office was vacant. Thereupon the county court declared the office vacant and appointed Hinton, who qualified and entered upon the duties, but was forcibly ejected by the military, and the office taken possession of by Leeman. Hinton then instituted a common law action against Leeman as a usurper. The court below decided in favor of Hinton and Leeman appealed, and upon that appeal the judgment below was reversed.

In that opinion (page 40) the court said:

> "But the authority to decide as to the freedom and equality of elections has not been conferred by the Legislature upon the board for trying contested elections, but forms a part of the general jurisdiction of the Circuit Courts."

Following this is a quotation from the statute, and the court continues:

> "The board for trying contested elections has no authority except, first, to determine whether or not the votes given have been correctly summed up; secondly, to decide as to the legality of the votes given; thirdly, to decide by lot who is entitled to the office when there is a tie between the candidates receiving the highest number of legal votes given; and, fourthly, to decide whether or not the candidate receiving the highest number of legal votes given is qualified to receive the office, and if he is not, to order a new election."

At the conclusion of the opinion in Leeman case the court says:

> "As Hinton has not alleged that the election was con-

> trolled by military force, and as he has not shown that he is entitled to the office even if the election was illegal and void, we need not express an opinion," etc.

Counsel for defendants in error claim that this portion of the opinion is in conflict with the other portions quoted. This is a mere idle contention. The court said in the opinion that the Circuit Court had jurisdiction of questions involving the freedom of elections. The proceeding in that case was not a contest, but a petition in the nature of *quo warranto*, but the petition was defective in failing to make the allegations stated. Therefore, a failure of the court to pass upon questions not raised by the pleadings in the action by no means conflicts with the opinion holding that the Board of Contest had no jurisdiction to decide as to the equality or freedom of elections, and had no powers except these specially conferred by statute.

Again, in Newcum v. Kirtly, 13 B. Mon., 522-3, the court below held that the powers conferred on the board were the same as declared to have been conferred in the Leeman opinion, that no other power could be exercised, and that consequently the action of the board in counting votes not polled, although it should appear that the polls had closed too soon, and the voters were, on that account, prevented from voting, was unauthorized. Said the court in that case:

> "The necessary and certain import of the provision is that the contestant shall not be adjudged to be entitled to the office unless the board find that he has received the highest number of legal votes given."

In the Commonwealth v. Jones, 10 Bush, 743, the same statute is quoted and the court, at pages 749-751-752, holds, that the board did not possess power to declare the election of Jones void, but was confined strictly to the powers enumerated in the statute.

But it is said that this court, in Wilson v. Hines, 99 Ky., 221, overruled the Leeman and Jones cases. An inspection of the Hines opinion will show the contrary. It will be observed that the contest in that case grew out of a local option election.

In such a case the title of the candidate was not in issue, and hence the abridgement of the rights, privileges and immunities of the citizen were not involved. The only question was whether the election was authorized, and whether or not a majority had voted in favor of the law. The law governing such contests, will be found in section 2566, Kentucky Statutes, and was adopted August 6, 1892, page 219, Acts 1891-2-3. In such contests, appeals may be taken from the decision of the board to the Circuit Court and the Court of Appeals. When the Leeman and Newcum cases were decided there was no appeal allowed from the decision of the County Board of Contest.

Such is not now the case, an appeal having been subsequently allowed by statute. But no appeal is allowed in the contest of Governor and Lieutenant-Governor. Hence the full force of the Leeman and Newcum opinions apply to the present case. The fact that the rights and immunities of the citizen were not involved in the Hines case, and that the only question was regarding a local option election, doubtless influenced the court in the Hines decision. Besides, the Wilson and Hines case was not decided by the whole court, but only one division of it. (See Volume 1, page 161.)

It will be seen that in the case of Wilson v. Hines, supra, this court, while holding that a contest board might pass upon any matter or thing constituting a lawful ground of contest, unless restricted by the statute which prescribes their authority, adds:

> "But in every case they are to be governed by the rules of evidence as well as by the law regulating their proceedings, *and their action is subject to review and correction on appeal, which the statute allows.*"

It was not the intention of Wilson v. Hines to overrule the Newcum, Leeman and Jones cases. In proof of this the Court of Appeals, in Hocker v. Pendleton, 100 Ky., ~~421~~ 726 (after the Wilson case), directly recognizes and follows the Leeman case, which is cited in that case, by counsel for appellees, by holding that the Circuit Courts have jurisdiction to determine the freedom or equality of elections.

Nor can it be successfully contended that the present opinion is the law of the case because it is a decision of the highest State court on a State statute. Where the rights, immunities and privileges of a citizen have been abridged in violation of the supreme law of the land the decision of no State court, however exalted, can confer jurisdiction upon the board which has robbed the citizen, by attempting to clothe it with a jurisdiction it does not possess, and that too, in the very teeth of a contrary doctrine recognized by the same court for more than half a century.

III. NO ELECTION IF NOT FREE AND EQUAL.

As stated, the judgment returned by the Board of Contest, and the resolution approving same, is based upon thin ballots and military interference. If the thinness of the ballot or military interference affected the election, as contended, it would have destroyed the freedom and equality of the election, and the Circuit Court was the proper and only forum in which to have that fact declared, as held in Leeman v. Hinton, supra, and Hocker v. Pendleton, 100 Ky., 726.

The number of votes given in the counties named in the notices of contestants as having voted thin ballots and in Jefferson, where military interference is relied upon, is nearly one hundred and fifty thousand (Volume 2 Record, page 176), greatly more than one-third of the votes cast in the State. As to the number of these counties excluded we do not know for the judgment does not specify. But conceding that none were thrown out except those attacked by the proof, viz., Jefferson, Knox, Martin, Magoffin, Pike and Johnson, there were 19,318 Democratic and 26,226 Republican, in all, 45,554 voters disfranchised (Record, Volume 2, page 176), nearly one-eighth of the entire vote cast.

The State Constitution, section 70, declares that the Governor shall "be elected for the term of four years *by the qualified voters of the State.*" And yet we have in this case the anomaly presented of certainly not less than 45,000, and it may be as many as 150,000, voters disfranchised, in counties

paying more than one-fourth of the revenues of the State, notwithstanding which it is contended that a Governor has been elected. If the contention of defendants in error be true, and voters have thus been disfranchised, the Legislature had no right to declare any one elected, and the only remedy was, through the courts, to declare the election not to have been free and equal, and order another election. In such case there would have been no vacancy, for the Governor in office would have held over under the Constitution until his successor was qualified.

Granting, for the sake of argument, that the ballots were so thin as to enable persons to see how they were voted, it was no fault of the voter. The State furnished the ballots; the voter could not use any other. They were compelled to use them or decline to vote. Although Mr. Cooley says, star page 605 (Cooley's Constitutional Limitations), "that while such ballots may not render an election void, they are exceedingly reprehensible and ought to be discountenanced by all good citizens;" he continues, at star page 607, by saying that "the cardinal rule is to give effect to the intention of the voter whenever it is not left in uncertainty;" and at star page 616, says, "that one entitled to vote shall not be deprived of the privilege *by the action of the authorities* is a fundamental principle."

Granting further, for argument's sake, that there was such military interference in Jefferson county as prevented persons from voting who would have otherwise voted, such interference would not justify the disfranchisement of those who did vote, none of whom were responsible for such interference. Under such circumstances the remedy was to have another election ordered, and thus enable the "*qualified voters of the State*" to elect a Governor and Lieutenant-Governor, instead of deciding that a portion of the voters of the State could elect such officers.

It is true that in Nall v. Tinsley, 21 Ky. Law Reporter, 1172, the court below held, that "ballots should be printed on white paper sufficiently thick that the printing can not be distinguished from the back and if ballots are used at an election

which do not substantially comply with the law the election is not conducted as required by law, and is invalid."

An examination of that case will show that the only question in issue was whether the ballots complained of were proper ballots, and the court decided that they were. The portion of the opinion quoted was mere *dictum*, was foreign to the issue, and was rebuked by three judges of the seven sitting. But granting that the principal is correct, the decision only adds force to our contention, that the use of ballots proven to have been too thin could at most only render the election void, and that under such circumstances no candidate could be declared elected.

The State Constitution declares, section 6 (Bill of Rights):

"All elections shall be free and equal."

How can an election be free and equal when not less than one-eighth of the voters of a State, and possibly as many as nearly one-half, are disfranchised? If the doctrine in effect asserted by the Contest Board, and tacitly endorsed by the court below, be true, that one-eighth or nearly one-half of the voters of a State may be disfranchised, and that notwithstanding this an election can be declared to have been holden and candidates elected, there is no freedom or equality of elections in Kentucky, and there is no reason why a candidate may not be declared elected when he receives a majority in less than one-half the counties of the State, although the voters in the remainder of the State, whose votes, if counted, would change the result, have been disfranchised. Such a decision would be an unspeakable outrage.

Says Mr. Cooley, star page 616, supra:

"And although the failure of one election precinct to hold an election, or to make a return of the votes cast, might not render the whole election a nullity, where the electors of that precinct were at liberty to vote had they so chosen, or where, having voted but failed to make return, *it is not made to appear that the votes not returned would have changed the result*, yet if any action was re-

quired of the public authorities preliminary to the election, and that which was taken was not such as to give all the electors the opportunity to participate, and no mode was open to the electors by which the officers might be compelled to act, *it would seem that such neglect, constituting as it would the disfranchisement of the excluded electors pro hac vice, must, on general principles, render the whole election nugatory, for that can not be called an election or the expression of the popular sentiment where a part only of the electors have been allowed to be heard, and the others, without being guilty of fraud or negligence, have been excluded.*"

Again, star page 621, Mr. Cooley says:

"If, however, the inspectors of election shall exclude legal voters, not because of honest error in judgment, but willfully and corruptly, and to an extent that affects the result, or if by riots or otherwise legal voters are intimidated and prevented from voting, or for any other reasons the electors have not had opportunity for the expression of their sentiments through the ballot box, the election should be set aside altogether as having failed in the purpose for which it was called. Errors of judgment are inevitable, but fraud, intimidation and violence the law can and should protect against."

In Pendleton v. Hocker, 100 Ky., 726, the court below held that where an election was attempted to be held on the question of the sale of spirituous liquors, and out of a voting population of 175 there were 60 who were prevented from voting because of insufficiency of ballots furnished by the clerk, the election was not free and equal within the meaning of section 6 of the Constitution. If that election was invalid, surely the election in the State was invalid, when one hundred and fifty thousand voters (much more than one-third of the total vote) were possibly disfranchised by the decision of the board. We assume, therefore, that the board had no right under the circumstances, even though it was satisfied of the grounds stated, to declare that any one had been elected. Nor is it necessary, as

indicated by the judge of the Circuit Court, that either party should rely upon the fact that no election was held. We contend that appellants were elected by the highest number of legal votes cast, but if from the standpoint of appellees there was no election, and the Legislature so believed, then the only remedy was to order a new election, and the action of the Legislature declaring contestants elected is void.

The law is particular in seeing that the candidate who received the highest number of votes should receive the office; and even though he should die pending the election, or should be ineligible, his opponent can not have the office. (Howes v. Perry, 92 Ky., 260; Cooley's Const. Lim., star page 620.)

It is constantly to be borne in mind that the point of inquiry—

> "Is the will of the electors as manifested by their ballots, and to this should all the evidence be directed and none that does not bear upon it should be admissible." (Star page 625, supra.)

The Supreme Court of Illinois, in People v. Saloman, 46 Ills., 415, decided:

> "Where there is a lawful election in a part only of the territory over which the election should be held, the election is void in its entirety."

An examination of the record, however, will show how utterly groundless are the charges of thin ballots and military interference.

IV. THIN BALLOTS AND MILITARY INTERFERENCE MERE PRETENSES.

As to the ballots the evidence was conflicting, and at most did not establish the fact that the manner of voting could not be determined when theballots were properly folded. In all the evidence NOT ONE witness stated that any voter was confused by the ballots, failed to vote, or changed his vote on that ac-

count, or that a single objection was made or vote challenged in any part of the territory named. Besides, it affirmatively appeared, without contradiction, that the result in November, 1899, between the leading parties was in proportion to that in preceding elections. It does not appear that contestants lost one vote, or that contestees received one vote improperly on account of the character of the ballots. This not only appears in the proof, but in the pleadings to which demurrers, admitting their truth, were sustained. (See answer and amended answer, 2 Volume Record, pages 10 and 58.) The complaint was not made in good faith, but was the mere pretense, which it was thought might give color at least to the contemplated robbery. Of the 116,000 ballots complained of not more than one dozen were produced in evidence, all the others having been destroyed. This fact is shown by the proof, and admitted by the pleadings. Under section 1482, Kentucky Statutes, and the decision of the court below in Struss v. Johnson, 100 Ky., 319, no ballot can be excluded from the count unless the same is sealed up and returned to the clerk of the county court with the returns of the election, with a true statement as to whether it has or not been counted; and if counted, what part and for whom. Indeed the court below has gone so far as to decide that, although contested ballots are returned to the proper officer sealed properly, they can not be counted unless accompanied with a statement that they had not been counted. (Anderson v. Likens, 20 Ky. Law Reporter, 1001.)

As to military interference, both proof and admitted pleadings show, that the excitement in Louisville, Jefferson county, was intense, so much so that a large number of extra policemen were sworn in and the Mayor issued a proclamation, in which, strange as it may appear, he prohibited crowds from assembling at the polls. Those opposed to contestants openly stated that the policemen and firemen were to be used to control the election in favor of contestants, threats were made by many that they would go to the polls armed, and on the afternoon of the day before the election more than seventy Republican officers of election were summarily removed, and their places filled with men who were in sympathy with contestants. The city was in a wild

state of excitement. A number of affidavits made by reputable citizens were filed with the Governor, who was in the city, stating that riot and bloodshed were imminent; that the local authorities were incapable of protecting the public peace, and could not be trusted to take charge of the State Guard, and requesting that he should call the guard, all of whom lived in Louisville, into their armory (as had been frequently done before in that city on election days), and take personal charge. This the Governor did, as the chief peace officer of the Commonwealth, making public statement that the purpose was to keep the peace and protect all the citizens. The soldiers, some one hundred and fifty, were stationed in the armory, which was not in sight of any polling place in the city, and not one of them was present during the election at any voting place, or was in sight of any polling place, or in any way interrupted the election or voters. The polls closed at 4 o'clock, p. m. After that hour Judge Sterling B. Toney, *who voted for contestants*, informed the Governor, in writing, that he had issued an order commanding that certain inspectors should be admitted to the count, that his order was being contemptuously disobeyed, and he was unable to enforce it. Thereupon, the Governor ordered out the soldiers to enforce the order. They did not leave the armory until after 7 o'clock, p. m., and found the polls closed and count completed, except in three voting places, and in no one of these did they interfere in any way. This is the sum total of the proof and admitted pleadings. (See Record, Volume 1, page 59, and evidence of D. W. Gray, C. C. Mengel, Judge J. W. Barr, Donald McDonald, J. T. O'Neal, J. B. Pirtle, W. O. Bradley, Milton Bronner, Andrew Cowan, Morris Gifford, G. W. Halsey, John R. Kelday, Thos. J. Landrum, Morris Lawson, Chas. F. Huhlein and Sterling B. Toney.)

The claim that these soldiers had been equipped for the purpose of taking part in the election was thoroughly exposed by the testimony. It was shown, that the Governor had made diligent efforts, after the old State Guard had gone into the United States service in the war with Spain, to organize a State Guard throughout the State; that after repeated delays

the members in Louisville had organized in August, and that the reason no equipments were sent to them until a short while before the election was because, they had been unable to obtain an armory, and that the gatling guns, about which so much has been said, belonged to the old State Guard at Louisville and were returned to their successors.

There was proof in the record that the Democratic registered vote failed to vote for contestants by about nine thousand, and hence it was assumed that these men had been prevented by military interference from voting, but in all the array of witnesses presented by contestants there was no proof that a single voter in Louisville had failed to vote on account of such interference. Contestees showed, by a large number of leading Democratic citizens, that there was great disaffection in that party on account of which many voted the Republican ticket, and about 2,000 voted for the Independent Democratic ticket. Brandeis, Speed and others showed, that upon a comparison of the votes cast by name and party affiliation with the registered vote, that the Republican was greater than the Democratic loss. Besides, it was shown that the most glaring frauds were committed by the Democratic organization, men prevented by all sorts of devices from voting, and Republican officers excluded from the booths when the count was made.

In short, there was nothing but pretense in the complaint of military interference, it being but another ground assumed to cloak the great wrong that was contemplated, and which, to the eternal discredit of the State, has been consummated.

That soldiers should not be employed to intimidate voters or influence elections no man will controvert, but the people are as much entitled to protection from riot and bloodshed on that as on any other day is equally true: that soldiers may and should be employed on such occasions, where it is shown the ordinary peace force is insufficient to prevent threatened disorders is recognized by Mr. Cooley. (See star page 615, supra.)

It can not be successfully contended that the court in investigating these questions can not look into the evidence and

pleadings before the Legislature. The action in such a state of case does not impeach or contradict any record or journal however sacred they may be held. If the court has jurisdiction to try the case, it may rightfully, and with care, inspect all the evidence that was heard in the tribunal complained of.

V. NOTICE OF CONTEST PRECLUDES JURISDICTION.

It is contended that the notice of contest did not confer jurisdiction on the two houses to try the contest. If this be true, no question as to the inspection of legislative action in contradiction of its journals, even if the correct doctrine, can have any application.

The jurisdiction to try the contest depends upon the notice. Section 1535, Kentucky Statutes, provides:

> "*No application to contest the election of an officer shall be heard,* unless notice thereof in writing, signed by the party contesting, is given. *The notice shall state the grounds of contest, and none other shall afterwards be heard* as coming from such party."

It was not alleged in the notices that there was a tie vote, neither was it charged that either of the contestees were not qualified. There is but one other ground of jurisdiction mentioned in the statute, and that is, that the contestees received the highest number of votes given. Besides, the Constitution says that "the person having the highest number of votes shall be Governor." In order to confer authority upon the two houses to try the contest the allegation should have been made in the notices either that each of the contestants received the highest number of votes or that the highest number of legal votes had been given each of them.

The notices in the main claim that the election was void, which, if true, would have taken the case out of the control of the legislature.

It is stated that the contestees were elected, but this is a mere conclusion, and it is nowhere intimated that they re-

ceived the highest number of votes. The notice must be specific "and point out the precise grounds of contest." (Rainey v. Ratcliffe, 81 Ky., 468; Grinstead v. Scott, 82 Ky., 88.) The names of the illegal voters should have been given and the reason why they were illegal. (Lunsford v. Culton, 15 Ky. Law Rep., 504.)

This view of the case is very clearly set forth in the terse and able dissenting opinion of Justice DuRelle in the court below.

The Legislature is a court of special jurisdiction to try these cases. It does not act as a Legislature, but as a contest board in its entirety. The statute regulating the proceeding speaks of the "judgment" of the board, etc. It has no authority to try any other State contest, indeed no other except as to its own members. Such tribunals have no jurisdiction in the absence of the statement of the jurisdictional fact in the pleading, which in this case is the notice. (Works on Courts and Jurisdiction, 31; Well's Jurisdiction, section 4.)

The demurrer filed to the notice and each paragraph thereof should have been sustained instead of being overruled. (Record, Volume 1, page 30.)

VI. JURISDICTION MUST BE PROPERLY EXERCISED.

But even though the Legislature possessed jurisdiction, both under the charges contained in the notice and the provisions of the statute, that jurisdiction must have been properly exercised and not used as an instrument of wrong or oppression. (Yick Wo v. Hopkins, 118 U. S., 373.)

Being authorized to act only "according to such regulations as may be prescribed by law," it could not lawfully disregard such regulations, but must have acted at least substantially within them, and the Kentucky Court of Appeals has directly recognized this principle in Newcum v. Kirtly, 13 B. Mon.; Leeman v. Hinton, 1 Duvall, and Commonwealth v. Jones, 10 Bush.

VII. MEMBERS CONTEST BOARD FRAUDULENTLY DRAWN.

It is charged and admitted by demurrer, that the members of the board were drawn by trick and fraud, so that only three Republicans were *placed upon the two boards of twenty-two members.* The court below says that the presumption must be indulged that the Legislature acted fairly, going on the principle that every officer must be presumed to have done his duty. But this presumption may not be indulged where the officer is charged with fraud. Besides, it must not be forgotten this is a tribunal of limited jurisdiction, for the Constitution requires that it shall determine the contest in accordance with regulations established by law.

Why create a tribunal of limited jurisdiction if it has the power to say absolutely, or if it must be presumed that it has acted within the limitations? The sovereigns, in making the Constitution, well knew what the result would be if a partisan Legislature were given unlimited and undefined power to try such contests. Hence, they were unwilling and declined to clothe them with such authority. They were careful to provide that the determination should be had under regulations established by law. And this is the strongest evidence that they intended that the judiciary should have the power to investigate whether or not the powers conferred had been violated.

> "The rule of law upon the subject appears to be that, *except where the Constitution has imposed limits upon the legislative power* it must be considered as practically absolute." (Cooley's Const. Lim., star page 168.)

Besides, the admission by the demurrer that the members were fraudulently drawn by trick and device overcomes any presumption that might have otherwise been indulged.

Coupled with this is the charge, made by affidavits before the board and the two houses, that five of the board were partial to contestants and had advised that the contests should be made; that two others were directly interested in that their

seats were contested on the same grounds as those set forth in the counter notice of contests in these actions; that another member was directly interested, having wagered money on the success of the contestants, which wager has been held up to await the result of the contest, and that two others had expressed the opinion that contestants should have the office even though they had not received the majority of the votes given, notwithstanding all which they were permitted to serve. We ask, is it due process of law to try this issue before a board fraudulently drawn, and which was incompetent to act by reason of partiality and interest? Due process of law certainly implies a fair tribunal, for, pray, what process of law can there be in forcing one to be tried before a tribunal whose opinion, by reason of interest and partiality, is made up before the trial commences? The makers of the State Constitution, and the statutes under which the contest was tried, never intended such a travesty on justice, and the statute which was the limit of legislative jurisdiction especially provided against such action.

By such action the Legislature not only refused to be bound by the chart of its authority, but exercised absolute, arbitrary power by reason of which its determination is void.

Says Mr. Cooley, star page 410, supra:

> "There is also a maxim of law regarding judicial action which may have an important bearing upon the constitutional validity of judgments in some cases. No one ought to be a judge in his own cause; and so inflexible and so manifestly just is this rule that Lord Coke has laid it down that 'even an act of Parliament made against natural equity, as to make a man judge in his own case IS VOID IN ITSELF; for *jura naturæ sunt immutabalia* and they are *legis legum*.' "

Continuing, at star page 411, the learned author says:

> "This maxim applies in *all* cases, where judicial functions are to be *exercised*, and excludes all who are interested, however remotely, from taking part in their exercise.

It is not left to the discretion of a judge, or to his sense of decency, to decide whether he shall act or not; all his powers are subject to this absolute limitation; and when his own rights are in question he has no authority to determine the cause. * * *

"Accordingly, when the Lord Chancellor was a shareholder in a company in whose favor the Vice-Chancellor rendered a decree, affirmed this decree, the House of Lords reversed the decree on this ground, Lord Campbell observing:

"It is of the last importance that the maxim that 'no man is to be a judge in his own cause' should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. We have again and again set aside proceedings in inferior tribunals because an individual who had an interest in a cause took a part in the decision. And it will have a most salutary effect on these tribunals when it is known that this high court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was, on that account, a decree not according to law, and it was set aside. This will be a lesson to all inferior tribunals to take care, not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of laboring under such an influence."

VIII. A REASONABLE HEARING DENIED AND EVIDENCE IGNORED.

By failing to give the contestees reasonable time in which to prepare their case, introduce their testimony and argue the cause, due process of law was denied. In every cause the party must be summoned or the judgment is void. A summons is worthless if one be not allowed reasonable time in which to answer and prepare his case. The existence of one requisite is as necessary as the other to give validity to the judgment. This court held in the case of Hovey v. Elliott, 167 U S., 444-5, opinion by Mr. Justice White.

"It being, therefore, clear that the Supreme Court of the District of Columbia did not possess the power to disregard an answer which was in all respects sufficient and had been regularly filed *and to ignore the proof taken in its support*, the only question remaining is whether a judgment based upon the exercise of such an assumed power is void for want of jurisdiction, and may, therefore, be collaterally attacked. It can not be doubted that where a judgment is rendered without the issuance and service of summons against a party who did not enter an appearance, the court rendering it is without jurisdiction to do so, and it can be assailed as void whenever presented as a muniment of right against another. Looking at the substance and not the form of the decree in the case of Hovey v. McDonald, upon which the rights of the plaintiff in error depend, it is plain that the judgment was substantially one without a hearing, for of what efficacy or avail was the summons to appear when the court which issued the summons rendered its judgment upon the theory that the summons was inefficacious, and that the defendant had no right either to appear or to be heard in his defense? As said by this court in Adams against Postal Telegraph Cable Co., 155 U. S., 689 and 698, the substance and not the shadow determines the validity of the exercise of the power."

In the same opinion (167 U. S., 418) the court approvingly cites the case of Galpin v. Page, 18 Wall., 350, wherein it is held:

"It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear *and has been afforded an opportunity to be heard*. Judgment without such citation *and opportunity* wants all the attributes of a judicial determination. It is judicial usurpation and oppression, and can never be upheld when justice is justly administered."

Said this court, speaking through Mr. Justice Field, in Windsor v. McVeigh, 93 U. S., 277-8:

"The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Whenever one is assailed in his person or his property there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to any respect in any other tribunal."

Before the two houses could have properly determined the contest they must have heard the evidence. No court can divest one of a right or privilege where proof is required without hearing the evidence. Judgment can not be rendered without process and a hearing as we have seen. A hearing includes the evidence. If A sue B for the recovery of personal property, alleging ownership and that he is entitled to the possession, and B traverse the allegation, and no evidence be introtroduced, and it could be certainly demonstrated that the evidence was not read, and that the evidence demonstrated, beyond question, the defendants' proper holding, no court could render a valid judgment in favor of A. This would be nothing more than the employment of brute force, and could not be upheld. Evidence in such a case is as necessary to authorize judicial action as process. To deny one the right to introduce evidence would be as arbitrary as to refuse permission to file a pleading when the party was not in default; and to give insufficient time to hear evidence, or to refuse to read it after it is given, would be equally reprehensible.

The opinion of the majority of the court below, however, here comes to the rescue of the Legislature with a presumption that it must have read the evidence. But how can this be possible, where the report of the board was filed on the 31st of January, and action taken by the Legislature that day, if the journals are to be believed. (1 Volume Record, pages 81-82-83.) And the evidence (now before this court) covers nearly NINE HUN-

DRED PRINTED PAGES. It is manifest that it was a physical impossibility for the evidence to have been read.

So that we find this body disregarding the statute under which it alone can act in the selection of the board, in refusing to grant sufficient time to the parties to prepare their case, introduce their testimony or make argument (for the board was the mere agent of the Legislature), and finally attempting to determine the rights and privileges of citizens without hearing the evidence upon which alone the contestants claimed the right to the offices.

IX. BOTH HOUSES DID NOT DETERMINE THE CONTEST.

Again, as a part of the due process of law, BOTH houses of the Legislature must have determined the contest in accordance with the rule laid down in the statute. The Constitution and statutes require that BOTH houses shall determine the contest. (Sec. 90.) Now what is meant by BOTH houses? Does it mean that a majority present shall control or does it mean that a majority of all the members elected to both houses shall be necessary? And did the Constitution mean that a majority of all the members in joint assembly could determine the cases? Clearly the intention and meaning of the section was that a majority of the members elected to each house should be necessary, and if either house failed by a vote of such majority to sustain the contest that it must fall. Otherwise, twenty-six votes out of one hundred in the House and eleven votes out of thirty-eight in the Senate, might control, upon the theory that a mere quorum was present. Or in case of joint assembly with only seventy members present, thirty-six out of that number could control. Those who favored the contest entertained the same views as to the constitutional and statutory requirements as we claim, and for the purpose of evading the Constitution enacted, through the Committee on Rules, of which Mr. Goebel was Chairman in the Senate, what is known as "Rule 11" (Volume 1, page 26, Record). So that, although the Constitution and statute

of the State required that the two houses of the General Assembly should act separately in determining contests concerning Governor and Lieutenant-Governor, said rule required that said houses should act in joint session. Not only so, although the Constitution required that the Lieutenant-Governor should by virtue of his office preside over the Senate, the rule, in defiance of the Constitution, required that in the joint session the Speaker of the House should preside, and gave to him alone the right to call such meetings. But to make the rule even more unconstitutional and odious, if possible, no provision was made for the return of the evidence or the reading of the same, but such reading of the evidence was rendered absolutely impossible by requiring that when the report was made it should be *immediatety* taken up for consideration and discussion for a time not exceeding six hours, and at the conclusion of that time, or sooner, if the discussion should have ceased, the joint meeting should vote to a conclusion of the business before it without intervening motion or business. This rule was adopted after this contest was inaugurated because it was feared that a majority of each House would not sustain the contest, with the view of furnishing an unfair, illegal and unjust method of stifling the truth and making easy the larceny contemplated. In point of fact the contests were taken up immediately on the making of the report and decided.

And yet the court below, in the face of a record made by the Houses that assumed to try these cases, and the physical impossibility for them to have heard the testimony, held that it must be presumed that they read the evidence.

Now in point of fact the pretended journals of the Senate show that on the 31st of January, and the 2d of February, only nineteen Senators voted in favor of the resolution adopting the report of the board. Not only the names of the persons are given, but also the number. On the 31st of January it is not claimed that the houses voted in separate, but in joint session; and the journal shows that only *nineteen* Senators voted for the resolution. (Record, Volume 1, pages 81 to 85, both inclusive.)

On the 2d of February, knowing that the proceeding of the 31st of January was void, each house voted separately on the resolution, the Senate again casting only nineteen votes for the resolution. (Record, Volume 1, pages 88 to 91, inclusive.) In the joint session of February 2, however, it appears that only *eighteen* members of the Senate voted for the resolution. (Record, Volume 1, pages 94-95.)

It is true that the journals recite when the nineteen Senators voted that a majority of the Senate voted for the resolution, and with equal ease and propriety recited when the eighteen Senators voted that a majority of the Senate had voted for the resolution.

In other words, it mattered not how many or how few Senators voted the number was a majority of the Senate. It is evident when the vote is shown specifically by name and number, in the journals, and the statement made that such number was a majority, that the full effect of the contention is that, in the opinion of the Senate, that number constituted a majority of the members of the Senate. The plaintiff, Beckham, states in his petition (Record, Volume 1, page 4) that nineteen members of the Senate voted for the resolution, entertaining doubtless the same opinion as the Senate, that nineteen members was a majority of the members of the Senate, Mr. Goebel being unable to attend. Hence when we assert it is clear that not more than nineteen members of the Senate voted and it is no contradiction of the journal, but in thorough accord with it. It will be seen that defendants in error undertake to explain that eighteen Senators constituted a majority, from the fact that T. M. Hill had never qualified, but this is denied, and no proof was had on the subject. It was known to no one more certainly than to these Representatives and Senators that the resolution was not properly adopted; and hence, on the 20th of February, a resolution was introduced and adopted in joint and separate session *re-adopting, re-enacting, re-affirming and ratifying* all the proceedings prior to that time.

It is contended that the action of January 31st is void because it was by joint session alone and because a majority of

the members of the Senate did not vote for the same; that the action of the Senate separately, on February 2d, was void because a majority of the Senate did not vote for the resolution, and that the action in joint session on that day was void because the joint session could not legally act, and even if it could, that the vote of eighteen was not a majority of the Senate. The pleadings show that there were thirty-eight members of the Senate elected, and as Mr. Goebel did not die until the 3d of February, there was that number of members alive on all the occasions mentioned. However, the death of Mr. Goebel could not affect the matter in any way, because when the Constitution speaks of both Houses it speaks of them as being constituted of the members elected, and a majority of either House means a majority of those elected. If we are right in our position the contest was not properly determined, and without such determination plaintiffs in error can not be deprived of their rights and privileges.

Doubtless when the framers of the Constitution created section 90 they had in mind the necessity by separate action of the two Houses to use one of them as a check upon the wrongful action of the other. Speaking of the power of the executive, a learned author says:

> "This negative power over the branches of the legislative department is a conservative power, and was intended in degree to check the Legislature in the well-known disposition of that body, as demonstrated in history and experience, from making encroachments on the other departments and gradually assuming to itself the exercise of executive and judicial power. (Story on Constitution, section 520.) The apprehension of this disposition on the part of legislative bodies was one of the main reasons for dividing the legislative body into two departments, of Senate and House of Representatives, in the belief that the one might act in degree as a restraint upon the other. Not only different individuals, but different bodies of individuals, will differ as to the extent of their own powers and as to the nature and extent of constitutional prohibitions; and generally the most popular branch,

are more easily moved by strong passions and excitement, under the temporary ascendency of some impetuous or popular leader, to act with less coolness and deliberation, to make encroachments upon the fundamental law, than the higher branch chosen from a more extended constituency.

"'One great object,' says Chancellor Kent, 'of the separation of the Legislature into two houses acting separately, and with co-ordinate powers, is to destroy the evil effects of sudden and strong excitement and of precipitate measures springing from passion, caprice, prejudice, personal influence and party intrigue, which have been found by sad experience to exercise a potent and dangerous sway in single assemblies.' No portion of the political history of mankind is more full of instructive lessons on this subject, or contains more striking proof of faction, instability and misery of States under the single dominion of an unchecked assembly than that of the Italian Republics of the middle ages, which arose in great numbers, and with dazzling but transient splendor in the interval between the fall of the Western and Eastern Empire of the Romans. They were all alike, ill-constituted, with a single unbalanced assembly. They were alike miserable, and all ended in similar disgrace." (Potter's Dwarris on Statutes and Constitutions, pages 338-339.)

X. VOID ACT CAN NOT BE RATIFIED.

If it be true that the vote in the Senate was insufficient, under the Constitution and laws, the effort of the two Houses on the 20th of February to make it legal was of no effect. Even though both Houses at that time had the right to take up the contest *de novo* and determine it by a constitutional vote, they could not ratify or adopt such action so as to make it legal or binding.

In the first place, we call attention to the fact that on the 2d of February, after the resolution adopting the report of the board had been attempted to be adopted by nineteen Senators, Senator Utley moved to reconsider the vote by which the Sen-

ate had adopted the same, and then moved to lay the motion to reconsider on the table, which last motion was adopted. The adoption of that motion finally disposed of the matter, and placed the decision of the contest beyond the power of the body. For this reason the action of February 20th was unauthorized and void.

Again, on the 20th of February, Senator Goebel had been dead for more than two weeks, and action at that time could not render valid or binding the oath which was administered to him before his death.

But on general principles, that which is void can not be made legal any more that that which is dead can be revivified. If the original action was void, it was worthless and of no effect. The paper upon which the proceeding was written was only so much blank paper. The pretended act had no existence, and that which was not could not be vitalized.

> "An act absolutely void at the time it was done can not be ratified." (Mechem on Public Officers, section 531.)
>
> "A void act of the Legislature can not be ratified or made obligatory." (Auditor v Cochran, 7 Bush, 1.)
>
> "Lapse of time may cure irregularities in judicial proceedings, but can not cure that which is void." (Schaefer v. Gates, 2 B. M., 457.)

XI. CONTEST NOT IN FACT DETERMINED.

We contend, in the next place, that due process of law was denied the paintiffs in error unless the decision of the Legislature was in fact made. It will be observed that the Legislature at most adopted the report of the board. The duty of the board was to pursue the forms of law obtaining in trials before a court, take the testimony and report to the General Assembly.

> "Such report shall not be final nor conclusive. Such decision shall be reported to the two Houses of the General Assembly, for the future action of the General Assem-

bly. And the General Assembly shall *then* determine such contest." (Subdivision 9, section 8, page 647, Kentucky Statutes, edition of 1900.)

The report gives no data. It is vague and general. It furnished no reason for the conclusions stated. The two houses were left in complete ignorance of the grounds upon which it was based. The testimony did not accompany it. Now how can it be said that the General Assembly "determined" the contest when there was nothing before it on which such determination could be had. It had no right under the law to make the judgment of the board the foundation of its determination. The word determine implies examination, investigation and the rendition of an opinion. The General Assembly, therefore, not having legally determined the contest, their pretended action could and did not vest defendants in error with any title to their offices upon which recovery could be had, and, therefore, the judgment below was unauthorized, and must be reversed.

XII. THE GOVERNOR'S PROCLAMATION OF ADJOURNMENT.

But it is contended that the Legislature had no right to act on the 31st of January or 2d of February because it had been adjourned by proclamation on the morning of the 31st until the 6th day of February. The fact that the court below has construed the State Constitution by no means precludes this court from construing it, when the contention is that plaintiffs in error have been deprived of rights, privileges, immunities and liberty guaranteed them by the supreme law of the land. As well might it be contended that this court is bound by the State courts' construction that a State statute does not impair the obligation of a contract. The court below, while manifesting tender solicitude for the legislative department and shrinking with almost prudish modesty from even criticising its action, although fraud and corruption is charged and admitted by demurrer, evinces no disinclination to decide that the executive

has improperly exercised a power claimed by him to have been conferred by the Constitution.

The question at issue being whether plaintiffs in error have been without due process of law deprived of their rights, privileges or liberty, and the jurisdiction of their tribunal which decided the case being primarily and essentially necessary to constitute such process, this court having assumed jurisdiction in the case, the decision of the court below on any essential point conflicting with the constitutional right is subject to review. If the court below, in giving an improper construction to the State Constitution, thereby attempted to validate the action of the tribunal that tried the contest, but for which construction its action would have been void, such construction is not binding on this court.

If Governor Taylor had the right to issue the proclamation of adjournment, and the Legislature saw fit to ignore it, all of its actions in this contest in violation of the proclamation are void, for plaintiffs in error have been thereby deprived of their rights, privileges, immunities and liberty without due process of law.

In order to arrive at a proper solution of this question, attention is called to both the old and new Constitutions of Kentucky.

> "The General Assembly shall convene on the first Monday in November after the adoption of this Constitution, and again on the first Monday in November, 1851, and on the same day of every second year thereafter, unless a different day be appointed by law; and their sessions shall be held at the seat of government." (Section 18, article 2, old Constitution.)
>
> "The first General Assembly, the members of which shall be elected under this Constitution, shall meet on the first Tuesday after the first Monday in January, 1894, and thereafter the General Assembly shall meet on the same day every second year, *and its sessions shall be held at the seat of government* except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor,

assemble for the time being elsewhere." (Section 36, present Constitution.)

It will be observed that under the old Constitution, the General Assembly was required to meet on a certain day unless a different day should be set apart by law.

In the new Constitution the day is certainly fixed, and no other time can be substituted by the Legislature.

In the old Constitution it is required that the sessions shall be held at the seat of government, and no provision is made for its being held elsewhere.

In the new Constitution, after the words "and their sessions shall be held at the seat of government," the following significant language is added, "except in case of war, insurrection or pestilence, when it may, by *proclamation* of the Governor, ASSEMBLE elsewhere."

Under the old Constitution there was no provision made for the holding of the sessions of the Legislature other than at the seat of government, except when such session was called on extraordinary occasions. Now, what reason is there in the contention that although the Governor can, under the present Constitution, in a certain contingency, convene the Legislature on the day set apart by law for their meeting, elsewhere, that he has no right to convene them, upon the happening of the same contingency during their session, to some other place?

The right of the Governor to issue this proclamation is not confined to the *time of meeting*, nor is he confined in his right to convene it at that time alone: but the right to issue the proclamation applies to the *place of meeting*, irrespective of time. The exception applies to the holding of "its sessions at the seat of government" as well as to its meeting. The Legislature is not only required to meet on the same day every second year, but it is required to hold its sessions at the seat of government after it assembles. Both these requirements are absolute "except in case of war, insurrection or pestilence."

When this contingency arises the Governor by proclamation may assemble it, for the time being, elsewhere, whether the contingency arises before or after the meeting.

In other words, the Governor may convene the Legislature on the day of its meeting elsewhere; or he may, in case the contingency arises, after it has assembled at the seat of government, assemble it elsewhere.

As to convening the General Assembly on extraordinary occasions, the following is the language of the new Constitution:

> "He may on extraordinary occasions convene the General Assembly at the seat of government or at a different place, if that should have become dangerous from an enemy or from contagious diseases. In case of disagreement between the two houses with respect to the TIME of adjournment, he may adjourn them to such TIME as he shall think proper," etc., etc. "When he shall convene the General Assembly, it shall be by proclamation, stating the subjects to be considered, and no others shall be considered." (Section 80, present Constitution.)

Section 41 of the present Constitution, declares:

> "Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting."

This is exactly the same as section 23, article 2 of the old Constitution.

This section clearly prohibits the Legislature from adjourning to *any other place*. The consent of both houses must be had to any adjournment for more than three days, but neither house, with or without the consent of the other, can adjourn to any other *place*.

The consent applies only to the *time* of adjournment. To give it the meaning contended for by opposing counsel, the words "without the consent of the other" should be transposed and appear at the conclusion of the section. Again, in case of any of the contingencies named, the General Assembly might reasonably be dispersed in a moment and desert the capital of the State without ad-

journing elsewhere. It could not be expected to re-assemble at the capital in order to adjourn to another place. It would have no authority, by any power of its own, to meet elsewhere, and hence, its session would be destroyed. In such a case it can not be doubted that the Governor could assemble it at some available place.

The present case demonstrates the wisdom of the construction contended for.

Paragraph 2 of the amended answer, page 59, vol. 1 of the record, charges:

> "As to the proclamation of defendant Taylor, as Governor, adjourning the Legislature from Frankfort to London, defendants further say, that at the time of said proclamation, the aforesaid William Goebel had just been shot; that the most intense excitement prevailed in the city of Frankfort; that threats of blowing up the public buildings and taking human life were being freely made; public peace was threatened and a general state of confusion, insurrection and danger to life and property existed in the city of Frankfort."

To this amended answer a demurrer of appellees was sustained. That demurrer admitted the truth of the facts charged. If under such a state of case the Governor had not adjourned the Legislature, to meet elsewhere, and it had met in the capitol building, it would have evidently been both unsafe and dangerous.

XIII. RULES DEFINING DUE PROCESS OF LAW.

In view of the many plain and palpable violations by the Legislature of the laws of the land, its exercise of unwarranted jurisdiction, its cruel use of arbitrary power, its contempt for the rights of the citizen and the representatives of the people chosen at the ballot box, how can it be contended for an instant that it has afforded the plaintiffs in error due or any process of law? Such conduct is strangely out of place when

contrasted with the rules that are applicable to the trial of cases.

Said the court in Wyndham v. The People, 13 N. Y., 434, approvingly quoted in Potter's Dwarris on Statutes and Constitutions, page 437:

> "To give this clause 'due process of law,' its true and proper value to the citizen, it must be made to mean that no person shall be deprived *by any form of* legislative or governmental action of either life, liberty or property, *except as the consequence of some judicial proceeding appropriately conducted.*"

Continuing, the court says (which is also approved), page 437:

> "The meaning of this provision, then, according to its best interpretation by judicial authority as well as history, is that no member of the State shall be disfranchised, *or deprived of any of his rights or privileges*, unless the matter shall be adjudged against him upon trial had according to the course of the common law; he is to be secured the benefit of those rules by which judicial trials are regulated and to place those rules beyond the reach of legislative subversion."

And in the case of C., B. & Q. R. R. v. Chicago, 166 U. S., 234, the court held:

> "It is true that this court has said that a trial in a court of justice according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice—the court having jurisdiction of the subject-matter and of the parties, and the defendants having full opportunity to be heard, met the requirements of due process of law. (U. S. v. Cruikshank, 92 U. S., 542-554; Leeper v. Texas, 139 U. S., 462-468.) But a State may not, BY ANY OF ITS AGENCIES, disregard the prohibitions of the fourteenth

amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. *In determining what is due process of law regard must be had to substance, not to form.*"

In Yick Wo v. Hopkins, 118 U. S., 373, this court held, through Mr. Justice Matthews:

"Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and unequal hand, * * * it is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this court in Henderson v. Mayor of New York, 92 U. S., 259; Chy Lung v. Freeman, 92 U. S., 275; Ex parte Virginia, 100 U. S., 339; Neal v. Delaware, 103 U. S., 370, and Soon Hing v. Crowley, 113 U. S., 703."

This court held in Poindexter v. Greenhow, 114 U. S., 295, Mr. Justice Matthews delivering the opinion of the court:

"And it is no objection to the remedy, in such cases, that the statute upon application in the particular case sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States."

XIV. THE LEGISLATURE ABOVE JUDICIAL CONTROL.

The broad and unqualified announcement by the court below, that the action of the Legislature can not be reviewed by the judiciary because the power to act is conferred by the Constitution upon it as a separate department of government, is a doctrine both startling and monstrous. That the action of the legislative body within constitutional limitations may be final will not be controverted; but if, as in this case, it sees fit to violate the Constitution and statutes of the State, and the Constitution of the United States also, and without authority, acts in a given case upon the facts presented therein, because under another state of fact it has authority; if in acting it fails to grant to the party affected due process of law, the Constitution of the United States, which is the supreme law, may be invoked to prevent a robbery, and rebuke the tyrant. To hold otherwise would be to decide that the fourteenth article of amendment to the Constitution is but an empty sound, and republican government a failure.

The Legislature is but the servant of the people. It was created by the sovereign will, and there can be no supposable case where it may become the master. When the people concluded to constitute the Legislature a contest board to determine as to two State offices any contest that should be made, which power would have naturally fallen to the judicial department, they did not intend to vest it with arbitrary power, or to place it above all responsibility. It was not their intention to enable it to commit grand larceny. The power to deprive one of his rights, privileges, immunities, property, liberty or life without due process of law was not intended to be, was not and could not have been, conferred on any governmental department. While action within the law might be considered final in any department of government, action without the law, arbitrary and tyrannical action in disregard of rights secured—not only by the Federal Constitution, but by the rules of common honesty—can not be recognized as being either final or binding in any civilized government. The courts are constantly holding that laws passed by the Legislature are unconstitutional. If a

statute, which is in the direct scope of its powers as a law-maker may be destroyed by the decision of a court, why should not the action of its members, not as a Legislature, but as a contest tribunal, being judicial or quasi-judicial, be the proper subject of review? If a statute passed by it may be declared unconstitutional, why may not its action as a contest board be likewise so declared? Can it be said that the latter power is superior to the former?

The power conferred on the two Houses in the contests named was conferred subject to the same limitations that would have attached had it been conferred on the judicial department. Besides, it was not conferred as a legislative power. The two Houses were merely made a contest board in their entirety. The legislative department, whether it be clothed with general or special power, can not plunder the citizen or trample his rights in the dust with any more impunity than can the executive or judicial power commit such an outrage.

Said Mr. Chief Justice Marshall, for this court, in Cohens v. Virginia, 6, Wheat., 381-382:

> "The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution, and if there be any who deny its necessity, none can deny its authority. To this supreme government ample powers are confided, and if it were possible to doubt the great purpose for which they were so confided, the people of the United States have declared that they are given 'in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to themselves and their posterity.'
>
> "With the ample powers confided to this supreme government, for these interesting purposes, are connected many express and important limitations on the sovereignty of the States, which are made for the same purpose. * * * The maintenance of these principles in their purity is certainly among the great duties of the government. One of the instruments by which this duty may be peaceably performed is the judicial department.

It is authorized to decide ALL CASES OF EVERY DESCRIPTION, ARISING UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES."

The people of Kentucky have clearly announced that it was not their intention to confer such an unbridled license upon the legislative department as would place its action above judicial inquiry, when the rights, privileges, life, liberty or property of the citizen is involved. In their Bill of Rights, section 26 of the Constitution, occurs this language:

"To guard against transgression of the high powers which we have delegated, WE DECLARE that everything in this Bill of Rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void."

In the same instrument it is declared:

"Section 1. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

"1st. The right of enjoying and defending their lives and liberties.

* * * * * * * * * *

"3d. The right of seeking and pursuing their safety and happiness.

"Section 2. Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a Republic, not even in the largest majority.

"Section 14. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delivery."

And in the face of this broad assurance of the largest liberty and the fullest protection of every right the highest court of Kentucky has held that the action of this legislative body is supreme, and that there is no power which may even criticise its action. When, however, the question is presented as to

action of the executive, another co-ordinate branch of the government, in the issuing of a proclamation, the court manifests no concern, but proceeds in a truly refreshing manner to condemn his action as unwarranted.

And yet in their opinion, in illustrating the independence of each department, they instance the executive by saying that they could not inquire whether the Governor had properly granted a pardon. Suppose the Governor's power "to pardon had been by the Constitution required to be executed in accordance with regulations established by law" and the Governor had exercised such power outside those regulations, what then would be the jurisdiction of the court? A reference to the power of pardon, which exists without limit, is an unfair illustration of the question in issue.

In declaring that the action of the Legislature is final, and not the subject of judicial investigation, because no appeal has been provided from the decision, the court below deliberately destroys the old landmarks established by its opinions for nearly half a century.

In Newcum v. Kirtly, 13 Ben Mon., 524 (which was decided by 1852), the Kentucky Court of Appeals, while holding that the decision of the Contest Board was final, nevertheless held that in so far as the decision went outside the statute (which was the same as now except no appeal was allowed, Acts 1850-1851, page 92), and undertook to pass upon votes not given, it was unauthorized. In other words, that the decision was final as long as the board confined itself to the statute.

Much ado has been made concerning the declaration in the Newcum case, that the purpose of creating such boards was to prevent the ordinary tribunals of justice from being harrassed, etc. But, notwithstanding this, the court held that it would, and actually did, interfere to prevent the exercise of an unauthorized power.

The court below decides that the action of Contest Board is final and exclusive, and cites the Newcum case, the case of Batman v. Magowan, 1 Met., 533; Stine v. Berry, 96 Ky., 63; Anderson v. Likens, 20 Ky. Law Rep., 1004, and Booe

v. Kenner, 20 Ky. Law Rep., 1343. An investigation of these cases will show that they are not in conflict with the Newcum case and Commonwealth v. Jones, 10 Bush, 743.

In no one of those cases did it appear that the board had exceeded its jurisdiction. That, in the absence of any right to appeal, such decisions are final so long as the board confines itself to the jurisdiction conferred upon it there can be no question, but the moment it exercises jurisdiction in questions which are not by law submitted to it, that moment its decision becomes void, and may be collaterally attacked.

So said the court below in the Newcum case, and in Commonwealth v. Jones, 10 Bush, more than thirty years afterward, reaffirmed it. At page 743, in last-named case, the court said:

> "It is plain that the action of the board *within the limits of its jurisdiction* is final and conclusive as well upon the courts as upon the other departments of the government. But it is equally clear, and we do not understand the proposition to be questioned by the Commonwealth's counsel, that *when the courts are called upon to enforce the judgments of the board*, or to punish those who disobey its mandates, *they have the power to inquire into and determine as to its jurisdiction in the particular case in hand. Without jurisdiction to act the finding and judgment of any board or tribunal is necessarily void, and may be so treated by all the world.* The cases of Batman v. Megowan (1 Met., 538) and Newcum v. Kirtley (13 B. Mon., 517) are perfectly consistent with this view. In Batman's case the question of the jurisdiction of the county contesting board was directly considered, and the mandamus refused upon the sole ground that the notice of contest had not been given within the time fixed by law, and, therefore, that the board had no jurisdiction to hear and determine the matter. And however anxious the Legislature may have been at and before the time of the decision in Kirtley's case to prevent the ordinary tribunals of justice from being harassed and possibly overwhelmed with the investigations, and involved in the

excitements to which contested election cases may be expected to give rise, that anxiety has ceased to exercise a controlling influence over legislation, and appeals from the decisions of county boards are now allowed to the Circuit Courts, and from these tribunals to this court.

"In view of the finality of the action of the Contesting Board in cases of State officers (which is exactly the same as that of the Legislature in this case), it is a matter of regret that its jurisdiction and powers are not more accurately and specifically defined by the statute."

Continuing, at page 749, the court says:

"This is not an erroneous judgment which can not be corrected on account of the want of power or jurisdiction in another tribunal to review it. *The board having no power to act in the premises, it is not a judgment at all.*"

In this connection the attention of the court is called to the case of Newcomb v. Newcomb, 13 Bush, in which the court below said:

"Other cases might be cited sustaining the doctrine that no one can be deprived of his personal or property rights without being first heard. Such a plain principle of natural justice requires no authority to support it."

They thus dispose of this argument:

"Section 16 of the Civil Code denies the defendant the right of an appeal to this court from the judgment granting a divorce. So the appellee in this case, by reason of the act of March 9, 1869, is denied the right to petition for a new trial, is denied the right (if a nonresident) to appear within five years and move to retry this case; and, by section 16 of the Code, has no appeal. When she appears in court, and by petition asks for a new trial, the law forbids it; when she asks an appeal it is denied her; and, lastly, when the judgment she desires to assail is interposed to divest her of what she claims to be her right of property, she is told that parol evidence is inadmissible.

to show that a domestic judgment is void. Can such a case be brought within the rule by reason of public policy, the defendant denied a hearing, the most important relation in life severed by means of a void judgment, and the party wronged be without remedy? In such a case the reasoning of the court in the case of Starbuck v. Murray might well apply. No rule will be allowed to violate every principle of natural justice by depriving the sane or insane of the rights of person or property without a hearing. Every one whose rights are to be effected by a judicial proceeding must have his day in court. This is one of the fundamentals of the law; and when a judgment has been rendered without citation or summons, there must be some remedy afforded the party complaining."

"The party defendant was not in court, but it is insisted by the counsel for the appellant that SHE WAS IN COURT BECAUSE the record says she was in court. This response might well be made if the appellee had her remedy by an appeal, or could by proper proceedings vacate the judgment. In such case the rule, that a judgment by a court having jurisdiction of the subject-matter and the parties, can not be attacked in a collateral proceeding, is made to apply, but where these remedies are all withheld from the defendant in an action for divorce by reason of the statute, it would be inconsistent with public interest and morals, as well as a palpable violation of the natural, legal and constitutional rights of the citizen to say, that a judicial tribunal could, by its judgment, sever the marital relation without notice to the parties in interest."

The argument of counsel for defendants in error, that there must be an end to litigation and that some tribunal must finally settle every controversy, is unquestionably correct; but no tribunal which exceeds its jurisdiction, or acts without jurisdiction; no tribunal that acts arbitrarily, or without authority, can settle or determine anything. The Constitution of the United States extends its protecting shield over the citizen and saves him from spoliation and tyranny.

This is an action to declare appellants usurpers, and to re-

cover from them the possession of the offices, papers, etc., etc. In order to recover in such an action the plaintiff must show a good title. (Hinton v. Leeman, 1 Duvall, 43; Howes v. Perry, 92 Ky., 13.)

And now, that the contestants seek the aid of the court to enforce their judgments, we clearly have the right to inquire whether or not the board acted within its jurisdiction as held in the Jones case, and whether or not plaintiffs have any title.

The court below, however, attempts to escape the effect of its previous opinions by saying that in the Jones case the board had found—

> "That Jones had accepted a challenge to fight a duel, and was, therefore, disqualified to hold an office. But as, under the Constitution, a conviction of the offense was necessary to disqualify Jones from holding office, this court disregarded the finding of the board, for the reason *that it related only to an immaterial matter.* In this case, however, the Legislature finds the part that determines the rights of the parties. There is nothing in their finding to show that the election was void."

With profound respect for the court below, we must be permitted to say the statement of the court, that the finding of the board was disregarded "for the reason that it related only to an immaterial matter," is neither fair nor in point of fact true. Upon the contrary, it was held that the finding of the board was upon a material matter—one which deprived the citizen of rights secured to him under the Constitutions of the State and Nation. The whole theory of the decision is that the board exercised a power not conferred upon it by law, and that, therefore, it acted without jurisdiction, and its decision could be collaterally attacked.

The statement that it does not appear in the *finding* that the election was void, and that, therefore, the court is powerless to act, can not be sustained in either law or morals. The notices of contest, which are the foundation of the exercise of jurisdiction, do not claim that the contestants received the highest number of legal votes, and a finding that such was the

case by the Legislature is entirely outside the notice. The notice shows upon its face that the finding is without authority, and essentially precludes the jurisdiction of the court. Nor is this all. The evidence shows conclusively that the finding was not, and could not have been, made on any of the enumerated grounds of the statute.

If it be true that the party complaining must be confined to the judgment on the contest, then such finding, if regular on its face, would deprive the citizen of his rights even though no notice had been given or no proof introduced.

But we are told that the journals of legislative bodies may not be impeached for fraud nor the motives of the Legislature be inquired into. There seems to be a contrariety of opinion on this question, but for the purposes of this investigation it is unnecessary to enter into any discussion.

Out of the many authorities cited by opposing counsel, not one holds that in a trial before a Legislature involving the rights, immunities, privileges and liberty of the citizen, its action may not be reviewed.

No attempt is made here to contradict or impeach *legislative* action. To allow the motives of the Legislature or its conduct to be inquired into in the passage of a statute, or in the discharge of a plainly legislative duty, might be said to result in endless litigation and the attacking by litigants of almost every statute enacted, and hence could not be allowed. But the determination of a contest, which has occurred but once in more than one hundred years, can not be said to open the gates of litigation indiscriminately.

It is said that the people have a remedy against any wrong inflicted by the Legislature. This may be true as to the passage of a statute, for the sovereign may elect representatives who will repeal it. But this doctrine has no application in the present case. It matters not how many Legislatures may be elected hereafter, they will be unable to undo the wrong inflicted, not only on the people, but on the parties directly in interest. Nor can the people, even though they shall so desire, elect Representatives who will repeal the present election law or prevent the recurrence of such an outrage. If the present

regime can now boldly defeat the will of the people with an election machine, they can continue to defeat their will in the future by employing the same methods. From such tyranny and fraud there can be no relief. Nor can any relief be afforded the injured parties to this controversy. If the action of the Contest Board is to remain in force they are deprived of their offices, their rights and immunities abridged, and their liberty invaded and violated. The doctrine, therefore, of legislative responsibility to the people and the power of the people to remedy legislative wrongs has no application to this case.

By analogy the cases of Jones v. Jones, 12 Pa. St., 350; Cronise v. Cronise, 54 Pa. St., 262-263, forcibly sustain our contention. The Constitution of Pennsylvania conferred power on the Legislature to grant divorces for causes other than those prescribed in the statutes.

The case of Jones v. Jones, supra, was an action of ejectment. The lands in controversy had descended to the wife, who was plaintiff. In order to sustain her title she introduced and read an act of the Pennsylvania Legislature, passed in 1845, divorcing her from her husband, Joseph P. Jones, but which did not state the cause for which the divorce was granted. The defendant then offered in evidence the record of an action for divorce in 1842 by the wife against him, in which a verdict had been rendered in his favor. The defendant also offered to prove that the petition of the wife, with certain affidavits and documents praying an act divorcing her from her husband, was presented to the Legislature by one of her counsel, who was at the time a member; and that the act of assembly was procured by fraud, falsehood and undue means, and without notice, and by misrepresentation of the member referred to. All this evidence of defendant was rejected, and error was assigned.

At the outset the court says:

> "But in this State the Legislature seems to have acted on the ground that it *was the exercise of a legislative power*, and, therefore, not requiring a judicial examina-

tion. We think, however, this doctrine may well be questioned."

Continuing, on the next page, the court says:

"The power confided to the Legislature is *a limited power*, and it can not be allowed that they should convert it into an unlimited power. If they can convert a special jurisdiction into a general jurisdiction, the provision of the Constitution becomes dead."

Again, the court says:

"It was, however, ruled in Kemp v. Kennedy that courts of limited jurisdiction must not only act within the scope of their authority, but that it must appear on the face of their proceedings that they did so, and if it does not so appear all their proceedings are *coran non judice*."

"But," says the learned judge, "I place the decision on the broad ground that the Constitution must be preserved, and that if courts should refuse to permit evidence to show the grounds of the divorce the Legislature could obliterate the clause in the Constitution."

The court accordingly held that it was competent to go behind the act to establish the ground upon which the divorce was granted, and that if it appeared that such ground was embraced in the statutes the act was unconstitutional.

In the case of Cronise v. Cronise, *supra*, the Jones case was reviewed and affirmed.

But there is a material difference in the sections of the Pennsylvania and Kentucky Constitutions. Originally the Constitution of Pennsylvania conferred unlimited authority on the Legislature to grant divorces. This, however, was changed and, the limitation stated adopted.

In Kentucky unlimited power was never conferred on the Legislature to determine contests. The only effect of the Constitution was not to confer power on the Legislature to determine contests, but the two Houses, in their entirety, were

elected as a Contest Board to determine the contests "according to such regulations as may be established by law."

Now when the determination is made the court has the undoubted right to inquire into the fact whether that determination is in accordance with such established regulations, and in order to do this has the power to investigate the entire proceeding. The limitation in election contests can not be made to appear in the judgment or determination relied upon because that determination does not show whether the rules were complied with, and of necessity can not pass upon the question as to whether or not they have been. The notice which is the basis of complaint must be looked into as well as the evidence, and the course pursued on the trial, when it is charged that each of them were in conflict with the statute, and that the party complaining has by reason of same, been denied a right guaranteed by the Federal Constitution.

In Cooley's Constitutional Limitations the learned author, after showing that the record of a court of general jurisdiction may not be contradicted, says:

> "But in the case of a court of special and limited authority it is permitted to go still further and to show a want of jurisdiction *even in opposition to the recitals contained in the record.*" (Star page 407.)

Under this plain and familiar rule it is contended that even parol proof may be heard to show that the Legislature, as a Contest Board, did not have jurisdiction to determine this case. And if this may be done, this court surely has the right to take into consideration the evidence before it to determine the same question.

To say that this unwarranted action of a legislative body is above and beyond control is to say that the citizen has no rights which it is bound to respect.

In Wilkinson v. Leland, 2 Peters, 627-657, Mr. Justice Story, speaking for this court, said:

> "That government can scarcely be deemed to be free

where the rights of property are left solely dependent upon the will of a legislative body, without restraint. The fundamental maxims of free government seem to require that the rights of personal liberty and private property shall be held sacred. At least no court of justice in this country would be warranted in assuming that the power to violate and disregard them—a power so repugnant to the common principles of justice and civil liberty—lurked under any general grant of legislative authority, or ought to be implied from any general expression of the will of the people."

No State Constitution or statute can place legislative action beyond the investigation of courts, nor can the Legislature, by any enactment, place the acts of its agents or servants beyond judicial inquiry.

This court, in Smyth v. Ames, 169 U. S., 466, through Mr. Justice Harlan, held that while the General Assembly of a State has the right to establish maximum rates for transportation of passengers and freights on railroads in such State, that such rates when unreasonable can not be enforced, and that the corporation affected has the right to appeal to the United States Circuit Courts under the section of the Constitution which prevents deprivation of life, liberty or property without due process of law; and that the State can not conclusively determine by its Legislature, or regulations adopted under its authority, such matters so that they may become fixed and beyond the subject of judicial inquiry.

In 1887 the Legislature of Minnesota approved a statute establishing a railroad commmission which was interpreted by the Supreme Court of that State as providing that the rates of charges adopted by the commission should be final and conclusive, and that there could be no judicial inquiry as to their reasonableness. This court held, through Mr. Justice Field, that the act was in conflict with the Constitution of the United States as depriving the company of its property without due process of law, and of the equal protection of the laws, and that the State could not by legislative act sanctify or make legal such a deprivation, or place it beyond judicial investiga-

tion. (See C., M. & St. Paul Ry. Co. v. Minnesota, 134 U. S., 418.)

Before leaving this branch of the discussion I must be permitted to say that I have not that deep reverence and deferential respect for the legislative department which the court below entertains. The legislative department is the most dangerous and uncertain of all the departments of government. By reason of its numbers, and its susceptibility to popular clamor, it is not properly constituted to try with coolness, caution or impartiality any case involving political ascendency. The very qualities which are essential in a court to protect the citizen in his rights, irrespectively of public or political excitement, are sadly wanting in a legislative body. The Legislature is fresh from the contests attending exciting elections and quite inclined, under the most favorable circumstances, to suspect the motives of those who differ with them, and to resort to measures of doubtful propriety in order to secure party ends. (Cooley's Constitutional Limitations, star pages 261-262.)

> "The judiciary is incomparably the weakest of either of the departments. The legislature has a controlling influence over the executive power, since it holds, at its own command, all the resources by which a chief magistrate could make himself formidable. It possesses the power over the purse and the property of the people. It can grant or withhold supplies, it can levy or withdraw taxes, it can unnerve the power of the sword by striking down the arm which wields it." (Story on Const., section 531.)

Well has DeLome, in his book on the English Constitution, in speaking of the legislative department (Book 2, chapter 3), said:

> "It is without doubt absolutely necessary for securing the Constitution of a State, to restrain the executive power. But is still more necessary to restrain the Legislature. What the former can do by successive steps (I mean subvert the laws), and through a longer or shorter train of enterprises, the latter does, in a moment, as its bare will can give

being to laws, so its bare will can also annihilate them. * * * In order, therefore, to insure stability to the Constitution of a State, it is indispensably necessary to restrain the legislative authority."

"The truth is," says Judge Story—

"That the legislative power is the great and overruling power in every free government. It has been remarked, with equal power and sagacity, that the legislative power is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." (Story on Const., Section 532.)

In a representative republic, where the executive is carefully limited, both in the extent and duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength; and which is sufficiently numerous to feel all the passions which actuate the multitude: yet so numerous, as to be incapable of pursuing the objects of its passions by means which reason prescribe; it is easy to see, that the tendency to the usurpation of power is, if not constant, at least probable; and that it is against the enterprising ambition of this department, that the people may well indulge all their jealousy and exhaust all their precautions. (Federalist, Nos. 48 and 49.)

Instead of standing with uncovered head before this department, rather should the judiciary scan with greatest care its comparatively irresponsible and reckless action. Decent respect for its action may be proper, but "bending the pregnant hinges of the knee," should never characterize the action of the judiciary, especially when called upon to protect the rights, the liberty or property of the citizen from arbitrary power. Of all the departments of government it should be the most thoroughly independent, for in it lies, at last, the greatest security of the citizen.

XV. DETERMINATION VOID IF PURELY LEGISLATIVE.

If the Legislature acted purely as a law-making power and is entitled, therefore, to immunity from investigation as to its

jurisdiction, it follows, from the facts attending that action, that its whole proceeding is void.

* * * * *

Section 89, State Constitution, requires:

"Every order, resolution or vote, in which the concurrence of both Houses may be necessary, except on a question of adjournment, or as otherwise provided in this Constitution, shall be presented to the Governor, and, *before it shall take effect*, be approved by him, or being disapproved, shall be repassed *by a majority of the members elected to both Houses* according to the rules and limitations prescribed in case of a bill."

This section of the Constitution is mandatory. No act or resolution can become a law unless the Governor is at least permitted the opportunity of signing the same. His signature or refusal to sign overruled by a majority of the members elected, is as necessary as the signature of the Speaker or presiding officer of either body. Under Rule 11, adopted by the General Assembly, which is clearly unconstitutional, because the object of the same was to avoid the constitutional requirement that contested elections should be decided by BOTH Houses, it was undertaken to create a joint session of the two bodies, and such joint session, it is claimed, did in fact meet under the same, and the resolution approving the judgment of the Board of Contest was by such joint session approved. This action was void. But it is necessary under the Constitution that each House should concur in this resolution in order to make it effective, and it, therefore, comes directly within the requirements of section 89, State Constitution.

It may be said that it was not necessary to submit this resolution to Governor Taylor, because of the fact that he had an interest in the same and most probably would have refused to approve it. Defendants in error did not think it improper for members of the Contest Board to act who were interested, nor for Senator Goebel to act on the Committee on Rules in procuring the adoption of a rule which violated the Constitution, but become greatly excited when told that Governor Taylor must have had the resolution presented to him. Unfortunately for

them the Constitution expressly declares that it "shall have no effect" until presented to the Governor. Whether he had an interest or not, it was his duty to approve it, if he believed, under the Constitution and laws, that it was proper; and it was likewise his duty to disapprove it if he felt that it was not constitutional. He could not have more than refused to approve it by veto or failure to sign within the constitutional limit. In the latter state of case, it would have become the law, and in the former, it should have been passed over his veto in order to make it effectual. As stated, this question is before this court, for it is only another instance in which due process of law has been denied.

CONCLUSION.

If the judgment below is affirmed, or the appeal dismissed, then indeed is the Commonwealth of Kentucky in a most pitiable condition. Claiming to be one of the States of the Union, she stands robbed of her right to choose her own rulers, and presided over by usurpers who drag at their chariot wheels her downtrodden people. Though one of the stars of the national firmament her light may not be seen through the impenetrable veil of tyranny which envelopes her. She has appealed to her own courts, but they have declined to give her relief. An appeal to the ballot box would be futile for the same power which so recently defeated the sovereign will, being emboldened by success and drunken with increased powers, even more readily, and mercilessly repeat the unspeakable outrage.

What are all our boasted privileges worth? What our bill of rights, though it may have been written in the blood of soldiers who died upon the battlefield or martyrs who perished in loathsome dungeons, if their limitations upon arbitrary power are to be ignored with impunity by the very agencies set apart to guard and enforce them?

In such an extremity, We make the last ~~peaceful~~ appeal to the highest court of the land, a tribunal, which, in the past, while others have been more or less controlled by the partisan

excitement of the hour, has calmly and self-poised risen above the storm, looking beyond at the eternal principles of justice, which should govern the affairs of men.

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CITATION OF AUTHORITIES.

1st. Jurisdiction of Supreme Court—

Section 90, Constitution of Kentucky.
Secton 709, Revised Statutes U. S.
Page v. Hardin, 8 B. Mon., 672.
Commonwealth v. Jones, 10 Bush, 735.
Standeford v. Wingate, 2 Duvall, 445.
Bailey v. Commonwealth, 81 Ky., 401-2.
In Re Sawyer, 124 U. S., 210-212-220.
Kennard v. Louisiana, 92 U. S., 480.
Foster v. Kansas, 112 U. S., 201.
Wilson v. North Carolina, 169 U. S., 594.
Munn v. Illinois, 94 U. S., 123.
Cromwell v. Randall, 10 Peters, 398.
Gray v. Coan, 154 U. S., 588.
Bridge Proprietors v. Hoboken Co., 1 Wall, 116-148.
Choteau v. Gibson, 111 U. S., 200.
Murdock v. Memphis, 20 Wall., 590-636.
Brown v. Colorado, 106 U. S., 95-97.
Detroit Railway Co. v. Guthard, 114 U. S., 135.
Byrne v. Missouri, 8 Peters, 42.
Clark v. Pennsylvania, 128 U. S., 397.
San Francisco v. Itsell, 138 U. S., 66.
Ills. C. R. Co. v. Chicago, Opinion U. S. S. Court, March 12, 1900.
Cohen v. Virginia, 6 Wheat, 381, 404.
Luther v. Bordan, 7 Howard.
Scott v. McNeal, 154 U. S., 45.
Huntington v. Attrill, 146 U. S., 657-683-684.
Mobile & Ohio R. R. v. Tennessee, 153 U. S., 486-492 to 495.

2d. Due Process of Law—

Scott v. McNeal, 154 U. S., 34-45-46.
14th Article Amendment, Constitution U. S.
Virginia v. Rives, 100 U. S., 313-318.

Ex parte Virginia, 100 U. S., 339-346.
Neal v. Delaware, 103 U. S., 370-397.
U. S. v. Cruikshank, 92 U. S., 542, 554.
Bank Columbia v. Okely, 4 Wheat, 235-244.
C B. & Q. R. R. Co. v. Chicago, 166 U. S., 84.
Yick Wo. v. Hopkins, 118 U. S., 378.
Hovey v. Elliott, 167 U. S., 418-444-445.
Galpin v. Page, 18 Wall., 350.
Adams v. Postal T. Co., 155 U. S., 689-698.
Windsor v. McVeigh, 93 U. S., 272-278.
Potter's Dwarris on State and Const., 437.
Leeper v. Texas, 139 U. S., 462-68.
Henderson v. Mayor of New York, 92 U. S., 259.
Chy Lung v. Freeman, 92 U. S., 275.
Ex parte Virginia, 100 U. S., 339.
Neal v. Delaware, 103 U. S., 370.
Soon Hing v. Crowley, 113 U. S., 703.
Poindexter v. Greenhow, 114 U. S., 295.
Smyth v. Ames, 169 U. S., 466.
C., M. & St. Paul R. Co. v. Minnesota, 134 U. S., 418.

SUBDIVISION 1—THE LEGISLATURE HAS NO JURISDICTION.

Potter's Dwarris on Statutes and Constitutions, 338-339-342.
Kentucky Statutes (Ed. of 1899), section 1535, and section 8, Goebel Law, page 650.
Leeman v. Hinton, 1 Duvall, 38-40-45.
Newcum v. Kirtley, 13 B. Mon., 522-3.
Wilson v. Hines, 99 Ky., 221.
Kentucky Statutes, section 2566.
Acts (Ky.), 1850-1851, page 92.
Acts (Ky.), 1891-2-3, page 219.
Hocker v. Pendleton, 100 Ky., 726.
Commonwealth v. Jones, 10 Bush, 743-749-751-752.
Cooley's Const. Lim., star pages 168, 410, 411, 605, 607, 616, 620, 621, 625.
Nall v. Tinsley, 21 Ky. Law Rep., 1172.

Constitution of Kentucky, sections 1, 2, 6, 14, 86, 70, 89.
Howes v. Perry, 92 Ky., 260.
People v. Saloman, 46 Ills., 415.
Kentucky Statutes, section 1482.
Struss v. Johnson, 100 Ky., 319.
Anderson v. Likens, Ky. Law Rep., Vol. 20, page 1001.
Rainey v. Ratcliffe, 81 Ky., 468.
Grinstead v. Scott, 82 Ky., 88.
Lunsford v. Culton, 15 Ky. Law Rep., 504.
Works on Courts and Jurisdiction, 31.
Well's Jurisdiction, section 4.
Hovey v. Elliott, 167 U. S., 444-445.
Galpin v. Page, 18 Wall., 350.
Adams v. Postal T. C. Co., 155 U. S., 689-698.
Windsor v. McVeigh, 93 U. S., 277-278.
Story on Const., section 520.
Mechem on Pub. Officers, section 531.
Auditor v. Cochran, 7 Bush, 1.
Schaefer v. Gates, 2 B. Mon., 457.
3d Const. Ky., section 18, article 2, and section 28, article 2.
Yick Wo v. Hopkins, 118 U. S., 373-4.
Cooley's Const. Lim., star page 407.

SUBDIVISION 2—LEGISLATURE IS NOT ABOVE JUDICIAL REVIEW.

Cohens v. Virginia, 6 Wheat, 381.
Newcum v. Kirtley, 13 B. Mon., 524.
Batman v. Magowan, 1 Met., 533.
Stine v. Berry, 96 Ky., 63.
Anderson v. Likens, 20 Ky. Law Rep., 1004.
Booe v. Kenner, 20 Ky. Law Rep., 1343.
Commonwealth v. Jones, 10 Bush, 743-749.
Jones v. Jones, 12 Pa. St., 350.
Cronise v. Cronise, 54 Pa. St., 262-263.
Cooley's Const. Lim., star page, 261, 262, 407.

Wilkinson v. Leland, 2 Peters, 627-657.
Smyth v. Ames, 169 U. S., 466.
C., M. & St. Paul R. Co. v. Minnesota, 134 U. S., 418.
Story on Const., section 531, 532.
DeLome on Eng. Consts., chapter 3, book 2.
Newcomb v. Newcomb, 13 Bush.

SUPPLEMENTAL BRIEF.

Through oversight the printer omitted the following pages of brief; which omission was not discovered until after the brief had been completed and partially printed. Hence the court is respectfully requested to allow same to be filed as a supplemental brief.

2. Jurisdiction of this Court.

But this court has jurisdiction for another reason. The answer of defendants in error presents directly the question that section 4 of article 4 of the Federal Constitution has been violated, and the decision of the court below by necessary effect decides to the contrary (vol. 1, Rec., p. 15).

The people of each of the colonies evidently believed that they had the right of revolution, and demonstrated that belief by resorting to arms and gaining the independence which today blesses many of the States of the Union, but which does not and cannot exist in Kentucky as long as the judgment appealed from remains in full force.

After the adoption of the Articles of Confederation, when the States, through their delegates, met in convention and formed the Constitution, they declared in the preamble thereof that it was adopted "to form a more perfect union, establish justice, *insure domestic tranquillity*, provide for the common defense, promote the general welfare, and secure the blessings of liberty."

In the fourth section of article 4 it was provided:

"*The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature*

or of the executive (when the legislature cannot be convened), *against domestic violence.*"

In the forming of that instrument the States surrendered many rights to the Nation, agreeing to give it their support in every substantial manner. In return the Nation guaranteed protection against domestic violence and a republican form of government to each of the States. While the God-given right of revolution, as against the national Government—should such circumstances arise as would justify it—the States surrendered to the nation the right of revolution as against their own authorities, and accepted its covenant not only to maintain their domestic tranquillity, but their republican form of government. This guarantee is without condition; it is absolute. We ask, first, what is intended by "a republican *form* of government?" Does it refer to the outline or to the substance? If to the former, it signifies nothing. The word "form" is employed to distinguish the government named from other governments.

Now, how is this guarantee to be made good? In case of actual hostilities the President may interfere, and if there be dual governments, in so doing may recognize one of them as the republican form of government; or if there be two governments, each claiming to be the true government and actual hostilities do not exist, Congress may determine which is the proper government. But suppose there is but one government, as in this case, where the legislature has usurped the powers of the executive, and by the passage of a corrupt law, the object and result of which was without reason or justice, to deprive the citizens of their votes, when under the constitutions, both State and Federal, they are entitled to vote, or has arbitrarily under such law deprived them from choosing their rulers, and there is no domestic violence, how is the guarantee to be enforced? The President has no right to interfere. Congress is not the proper authority in such a case to act. Then

what department of Government can act? If not the judiciary, there can be no relief. Surely the framers of the Constitution never intended such a result. Every power of the Government may be called into action to guarantee this solemn promise, the power acting to be governed by the status of each particular case.

The will of the majority is the life of republican government. That will can alone be manifested through the elective franchise. And if, after this has been done and the persons chosen deprived of their offices by the arbitrary action of a legislature, can it be said that a republican form of government exists?

Or, conceding the contention of defendants in error to be true, that at least forty-five thousand freemen have been disfranchised, without any fault of their own, in order to reach the result, can it be said that such a State has a republican form of government?

Said Mr. Chief Justice Fuller, speaking for this court, in Duncan *vs.* McCall, 139 U. S., 461:

"By the Constitution a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is *the right of the people to choose their own officers for governmental administration*, and pass their own laws in virtue of the legislative powers reposed in representative bodies, *whose legitimate acts* may be said to be those of the people themselves."

In these cases the plaintiffs in error do not represent their individual and official interests alone. They are here as the representatives of the people's will, expressed at the polls. They represent the dignity and power of the people, and should they fail, while they may lose an office, the people lose their sovereign power under the law of the land, and the nation demonstrates its inability to make good its pledge.

IN THE

Supreme Court of the United States

WILLIAM S. TAYLOR ET AL., PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

Reply Brief for Plaintiffs in Error.

I.

Mr. Maxwell, for defendant in error, argues that Taylor cannot claim to have been "deprived" of his office without due process of law, because he does not show that he ever had it.

By the same argument, if a man were in possession of a tract of land under a record title which seemed on its face to be valid, and he should be sued for the land, and on the trial the court should proceed arbitrarily, "contrary to the established principles of private right and distributive justice," should deny him a hearing, should hold a secret trial, of which he had no notice, and, without hearing any evidence to support plaintiff's claim, though denied, should enter a judgment against defendant for the land, the defendant could not prosecute a writ of error to reverse such a judgment on the ground that his property had been taken without due process of law, because

he had not established his title to the property of which he was in possession.

Defendant in the case at bar showed he had received the certificate of election; that he had been inducted into the office; that he was lawfully in possession thereof, claiming the right to it, and enjoying the emoluments thereof when this alleged adjudication took place; and but for that "adjudication" his right now would be undisputed, though it would rest on precisely the same basis—without any additional ratification or confirmation—that supported it up to and prior to this alleged adjudication.

The Court of Appeals in its opinion herein did not mean to deny, it could not have meant to deny, the foregoing propositions, for the title which Taylor held to the office by reason of his certificate and induction into office on Dec. 12, 1899, was precisely the same as that held by every other governor of the State who preceded him. Nothing further was to be done to complete it. It was subject to the possibility of a contest, just as the title of each of them had been, a contest that might or might not be made, according to the determination of his opponent; but that contest must be by due process of law.

We submit that a person thus in possession of an office, exercising its functions and enjoying its honors and emoluments under an admittedly *prima facie* valid title, has such a right as he cannot be "deprived" of without due process of law; and as to whether or not he had such right this court, on the admitted facts, will judge for itself, exactly as it determines for itself the existence or non-existence of a contract, when a claim is made that an act of a State legislature has impaired its obligation.

But, again, consider the case from its other standpoint, that of the rights of *the people* here involved. If it be claimed that Taylor has not shown that he had the office of which he claims to have been deprived, can there be any doubt that the people had the right to vote, the right to say

who their representative in the governor's chair should be? Yet this is a right of which they will be deprived if this edict of the legislature be enforced, whereby that body, arbitrarily and without evidence of the choice of the people, declared William Goebel governor, thus attempting to choose a governor for the people instead of deciding the question as to whom they had chosen.

II.

Mr. Maxwell asked, in substance, the question—we do not recall his exact words—what would have been the effect if the constitution of Kentucky had expressly said that the legislature should decide the contest, and its decision should not be subject to review by the courts?

We submit that such a provision would simply be interpreted to mean that it should not be subject to review by proceedings in the nature of an appeal, where the court might be asked to review and reverse the findings or decisions of the legislature when proceeding lawfully, *according to due process of law*, in the exercise of its jurisdiction; but it would not be interpreted to vest in that body the absolute, arbitrary power to do as it might please, free from judicial inquiry as to whether or not its proceeding had been according to due process of law.

Of course the people might by their constitution vest in the General Assembly the power to choose a governor, as the electoral college chooses a President; but the Court of Appeals does not decide that it has done that. It decides that it has only vested in the Assembly the power to *try a contest*, "a question," says the court, "requiring evidence for its proper determination" (Rec. 1, p. 151). And then, having thus defined the power of the Assembly, the court simply holds that no judicial inquiry can be had as to whether or not this trial was by due process of law; thus denying that these limitations of power can be enforced by

judicial process to protect the rights of the parties in interest "against the violence of public agents transcending the limits of lawful authority." (See Hurtado *vs.* California, 110 U. S., 536.)

III.

In this connection counsel referred to the Arkansas Governorship case and Judge Cooley's comments on it, viz., Baxter *vs.* Brooks, 29 Ark., 182. But it does not appear from that case that the action of the senate on the contest there involved was attacked on any such grounds as are the basis of the attack on the "adjudication" now pleaded. For all that appears, there was simply an attempt to have the court review and reverse the findings of the senate.

IV.

It was stated again and again in oral argument that defendant's whole case is based on the charge of *fraud* in the General Assembly. A simple reading of the answer and our briefs will show that this is only *one* of the charges, and one upon which least stress is laid.

V.

Wilson *vs.* North Carolina, 169 U. S., was, as we said in our brief, simply a case where the statute provided that in case of certain charges being made against a public official the governor might, *without* a *hearing or trial*, suspend him until there could be a trial. That is like the case of an appointment subject to the absolute power of revocation or discharge of the official by some other official, as in Parsons *vs.* U. S., 167 U. S., 324.

The case at bar is no such case.

VI.

Tameling *vs.* U. S. Freehold Company, 93 U. S., 644, did not involve a decision by Congress on a *disputed land claim*, as counsel seemed to think. A reading of the statement of the facts of the case will show it was simply a case where Congress under a statute simply confirmed a land claim after the acquisition of New Mexico, under a grant from the old Mexican government, which was reported by the surveyor General as regular and valid. At that time there was no dispute over the claim. Subsequently the owner of the claim brought suit against some one who had taken possession, but who does not appear to have claimed a title antedating this confirmation of plaintiff's Mexican title. The simple question was the validity of that act of confirmation, which was in no sense a determination by Congress of a disputed claim between two contestants.

VII.

So the case of United States *vs.* Des Moines Company, 124 U. S., 544, was simply the case of a land grant by a State.

We have not been able to find any case, nor have the diligent counsel for defendant in error, where it has been held that any decision, whether by a court or some specially constituted tribunal, such as the one now under consideration, when passing on *a contested claim of existing right between two rival claimants*, was immune from the judicial inquiry as to whether or not it was pursuant to due process of law; and we do not believe any such case exists.

VIII.

Brief allusion has been made to the alleged "ratification" on February 20 of the previous "adjudication" of February

2. What is meant by the ratification of an adjudication we do not know. Either the action of February 2 was a trial and judgment or it was not. If it was, it needed no ratification. If it was not, then it could not be ratified. A mistrial cannot be ratified and thus made a trial. Each act was wholly separate, and must stand or fall alone. It was the action of February 2 which the court held to be the adjudication which it enforced.

At the meeting of February 20 there was no pretense of a *trial*. There was no notice to anybody that the matter would be taken up again that day. It had been claimed for weeks that the matter was settled, and that Beckham was governor. Moreover, the assembly still had no evidence before it and did not pretend to consider any on that day. There was no element of a "trial" about it. It was simply what it purported to be, viz., a political attempt to "ratify" an alleged judgment, which is a legal impossibility.

IX.

In one of the briefs filed for defendant in error reference is made to what is called a finding of fact by the State court, and which is said not to be reviewable here. It must be remembered, however, that this so-called finding of fact was after the court had sustained a demurrer to the answer which had been directed against this alleged fact, and on which ruling the questions discussed by us really arise. The demurrer having been sustained to the answer, of course nothing remained except to find the facts as alleged in the petition.

W. O. Bradley,
Helm Bruce,
For Plaintiffs in Error.

Office Supreme Court U. S.
FILED
APR 27 1900
JAMES H. McKENNEY,
Clerk.

No. 603.
Motion to dismiss.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 27, 1900.

No. 603.

WILLIAM S. TAYLOR AND JOHN MARSHALL, PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM.

ERROR TO THE COURT OF APPEALS OF KENTUCKY.

MOTION TO DISMISS.

The defendant in error moves to dismiss the writ of error for want of jurisdiction.

LEWIS MCQUOWN,
LAWRENCE MAXWELL, JR.,
Counsel for Defendant in Error.

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WILLIAM S. TAYLOR AND JOHN MARSHALL, PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM, L. H. CARTER, AND JOHN B. CASTLEMAN.

ERROR TO THE COURT OF APPEALS OF KENTUCKY.

MOTION TO DISMISS.

The defendants in error move to dismiss the writ of error for want of jurisdiction.

LEWIS MCQUOWN,
LAWRENCE MAXWELL, JR.,
Counsel for Defendants in Error.

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WILLIAM S. TAYLOR AND JOHN MARSHALL,
PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM.

ERROR TO THE COURT OF APPEALS OF KENTUCKY.

Brief for the Defendant in Error.

Taylor claims that he has been deprived of the office of governor of Kentucky without due process of law, and upon that ground invokes the jurisdiction of this court; but the highest court of the State held that he never acquired title to the office, by the only method in which title thereto can be acquired under the constitution and laws of the State, and on that ground decided the case against him. That decision involves no Federal question, and since

it is sufficient to dispose of the case and warrants the judgment rendered by the court of appeals, we submit that this court is without jurisdiction.

Before Taylor can claim that he was "deprived" of the office of governor he must show that he had a pre-existing title to the office; but whether he had or not is purely a question arising under the constitution and laws of the State, which has a right to provide how the result of an election for the office shall be ascertained and declared and title thereto established. The Federal Constitution prescribes no regulation on the subject. This fundamental doctrine is not open to dispute. It is recognized in Boyd *vs.* Thayer, 143 U. S., 135, 161, where Mr. Chief Justice Fuller said:

"Each State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen, and the title to offices shall be tried, whether in the judicial courts or otherwise."

And in Wilson *vs.* State of North Carolina, 169 U. S., 586, 594, where Mr. Justice Peckham said:

"In its internal administration the State (so far as regards the Federal Government) has entire freedom of choice as to the creation of an office for purely State purposes, and of the terms upon which it shall be held by the person filling the office."

For more than a hundred years the constitution of Kentucky has provided that the result of elections for governor and lieutenant governor shall be ascertained and finally settled and declared by the legislature. The provision of the present constitution, adopted in 1891, taken verbatim from the constitution of 1850 (art. 3, sec. 24), is as follows:

"SEC. 90. Contested elections for governor and lieutenant governor shall be determined by both houses of the General Assembly, according to such regulations as may be established by law."

The constitution of 1799 contained the following provision :

"Contested elections for a governor and lieutenant governor shall be determined by a committee, to be selected from both houses of the General Assembly, and formed and regulated in such manner as shall be directed by law." Art. III, sec. 27.

The highest court of the State has uniformly held and in the present case has again declared that under these constitutional provisions there is no power except in the legislature to ascertain and declare the result of an election, and that its decision is not subject to judicial review. That decision involves no federal question. It is only a declaration of the well-settled rule that where a specific mode of contesting elections is provided by the constitution or laws of a State, that mode is exclusive, and that where the power is lodged in the legislature its decision is final and not subject to judicial revision or annulment on any ground whatever.

State *vs.* Marlow, 15 Ohio St., 114, 134.
State *vs.* Harmon, 31 Ohio St., 250.
State *vs.* Berry, 47 Ohio St., 232.
Stearns *vs.* Wyoming, 53 Ohio St., 352.
State *vs.* Baxter, 28 Ark., 129.
Corbitt *vs.* McDaniel, 77 Ga., 544.
People *vs.* Goodwin, 22 Mich., 496, 501.
Hipp *vs.* Charlevoix County Supervisors, 62 Mich., 456.
Commonwealth *vs.* Leech, 44 Pa. St., 332.
State *vs.* Mason, 77 Mo., 189.
State *vs.* Francis, 88 Mo., 557.
Garrard *vs.* Gallagher, 11 Nev., 382.
Dennett, petitioner, 32 Me., 508.
Selleck *vs.* Common Council of South Norwalk, 40 Conn., 359.
Wright *vs.* Fawcett, 42 Tex., 203.
Rogers *vs.* Johns, 42 Tex., 339.
Bonner *vs.* Lynch, 25 La. Ann., 267.

The law of Kentucky was settled in 1858 by the case of Batman *vs.* Megowan, 1 Metc. (Ky.), 508, which was followed in 1894 in Stine *vs.* Berry, 96 Ky., 63. Extracts from the opinions in these two cases are found in the record at pages 53, 54. They show how firmly settled the rule has always been in Kentucky that the decision of the contest board is conclusive and not subject to judicial review.

Beckham presented a clear and indisputable title to the office, evidenced by the finding and declaration of the legislature that he had been duly elected. Taylor relied upon a certificate of the State board of canvassers, but that was superseded by the subsequent action of the legislature declaring Beckham's election. On this subject the court of appeals says (Rec., p. 150):

"But the certificate of the State board of canvassers is no evidence as to who was in truth elected. Their certificate entitles the recipient to exercise the office until the regular constitutional authority shall determine who is the *de jure* officer. The rights of the *de jure* officer attached when he was elected, although the result was unknown until it was declared by the proper constitutional authority. When it was so declared it was simply the ascertainment of a fact hitherto in doubt, or unsettled. The rights of the *de facto* officer, under his certificate from the canvassing board, were provisional or temporary until the determination of the result of the election as provided in the constitution, and upon that determination, if adverse to him, they ceased altogether. Such a determination of the result of the election, by the proper tribunal, did not take from him any pre-existing right; for if not in fact elected, he had only a right to act until the result of the election could be determined."

This is in accordance with the decision of the supreme court of Ohio, in State *vs.* Harmon, 31 Ohio St., 250, 260, where they said:

"Our system of elections is unknown to the common law. The whole subject is regulated by statute; and the mode of contesting elections is part of the machinery provided by statute for ascertaining the result of the election."

At the request of Taylor the trial court stated its conclusions of fact separately. It was found as a fact that—

"Said contests were finally determined by the General Assembly on the second day of February, 1900, at which time it was adjudged and determined by each house of said General Assembly, acting separately and also in joint session, that the said William Goebel was duly elected governor of the Commonwealth of Kentucky for the term beginning December 13, 1899, and was entitled to said office of governor, and it was then and there in like manner determined by said General Assembly and by each house acting separately and in joint session that the said J. C. W. Beckham was duly elected lieutenant governor of said Commonwealth for the same term."

This finding of fact is not open to review in this court.

Taylor's whole complaint is that the State court refused to permit him to introduce parol testimony to show that the action of the legislature, in the exercise of its undoubted constitutional authority to declare the result of the election, was tainted with fraud; but if the State court erred in holding that the action of the legislature could not be impeached in this way the error presents no Federal question. The Constitution of the United States does not guarantee that the parties to a suit in a State court in which an act of the legislature of the State is in issue shall have the right to impeach it for fraud by parol testimony.

In Central Land Co. *vs.* Laidley, 159 U. S., 103, 112, Mr. Justice Gray said:

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State court does not deprive the unsuccessful party of his property without due process of law, within the fourteenth amendment of the Constitution of the United States (Walker *vs.* Sauvinet, 92 U. S., 90; Head *vs.* Amoskeag Mfg. Co., 113 U. S., 9, 26; Morley *vs.* Lake Shore & M. S. R. Co., 146 U. S., 162, 171; Bergeman *vs.* Backer, 157 U. S., 655)."

In Allen *vs.* State of Georgia, 166 U. S., 138, where it was held that the dismissal by a State court of a writ of error taken from a sentence of death, because the plaintiff in error had escaped and was a fugitive from justice, was not a denial of due process of law, Mr. Justice Brown said, page 140:

"We might ourselves have pursued a different course in this case, but that is not the test. The plaintiff in error must have been deprived of one of those fundamental rights, the observance of which is indispensable to the liberty of the citizen, to justify our interference."

In Chicago, Burlington and Quincy Railroad Co., 166 U. S., 226, 246, Mr. Justice Harlan said:

"Many matters may occur in the progress of such cases that do not necessarily involve in any substantial sense the Federal right alleged to have been denied; and in respect of such matters, that which is done or omitted to be done by the State court may constitute only error in the administration of the law under which the proceedings were instituted."

Substantially the same language is used in Backus *vs.* Fort Street Union Depot Co., 169 U. S., 557, 565.

In Kennard *vs.* Louisiana, 92 U. S., 480, 481, Mr. Chief Justice Waite said:

"The question before us is, not whether the courts below, having jurisdiction of the case and the parties, have followed the law, but whether the law, if followed, would have furnished Kennard the protection guaranteed by the Constitution. Irregularities and mere errors in the proceedings can only be corrected in the State courts. Our authority does not extend beyond an examination of the power of the courts below to proceed at all."

But the decision of the court of appeals in refusing to receive parol testimony to impeach the action of the legislature for irregularity or fraud is not subject to criticism. It is only in accord with the general rule which has been repeatedly affirmed by this court.

United States *vs.* Des Moines Navigation and Railway Co., 142 U. S., 510, involved the validity of a resolution passed by the legislature of the State of Iowa. The bill averred that its passage was induced by false representations and threats of suit, and it was claimed that the defendant had admitted the fact by demurring to the bill; but Mr. Justice Brewer, speaking for the court, said (p. 544):

"Such an allegation amounts to nothing. The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge and in good faith."

The learned justice quoted with approval the words of Judge Cooley (Constitutional Limitations (5th ed.), 222; 6th ed., 220), in which the author says that in any case in which the legislature has kept within the constitutional limits and observed the constitutional conditions—

"The courts are not at liberty to inquire into the proper exercise of the power. They must assume that legislative discretion has been properly exercised. If evidence was required it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the special act, it would seem that the passage of the act itself might be held to be equivalent to such finding. And although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged, and annul their action if the allegations were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon."

To the same effect is United States *vs.* Old Settlers, 148 U. S., 427, 466, and cases cited.

Since the case was decided by the State court upon the sole ground that Taylor did not show title to the office, it is unnecessary in our view to inquire whether a political

office is property within the meaning of the fourteenth amendment. That question can only arise in a case in which a pre-existing title (admitted or established) is divested by some act of the State. We submit, however, that a political office created by a State is not property within the meaning of the amendment. That it is not property at all was held by Judge Taft in the case of Sweeney *vs.* Poyntz (circuit court for the district of Kentucky, February 12, 1900, not yet reported), brought to enjoin the State board of canvassers from hearing or deciding the contest over the office of the auditor of public accounts of Kentucky on the ground of fraud, in which the court refused an injunction and dismissed the bill. Judge Taft said:

"It is sought to distinguish the case at bar from the Sawyer case (124 U. S., 200) on the ground that the decision there rested on the proposition that the office in question was not property, and equity only furnished injunctive relief to protect property rights; while here it is said that the office from which it is threatened to oust complainant is property. The office of auditor of public accounts and its duration is provided for by the constitution of Kentucky, and the same instrument forbids the legislature from increasing or diminishing the salary thereof during the term of any incumbent. It is urged that this freedom from legislative abolition and control makes the office property. The constitution of Kentucky does not declare that office is property, and the mere fact that the legislature cannot abolish it or change its salary does not change its character. The people by a new constitution might certainly abolish the office.

"The restriction only limits the power of the legislature to deal with the office, but it does not make it property. In England at common law it was otherwise. An office was an incorporeal hereditament, and might be granted either for life or in fee. In this country public offices are mere agencies or trusts. The compensation allowed by law is deemed equivalent for the service rendered. The prospective salary or other emoluments of a public office are not the property of the officers or of the State. They are not property at all. They are like daily wages unearned and which

may never be earned. The incumbent may die or resign and his place be filled and his wages earned by another. The right to compensation grows out of the rendition of the services and not out of any contract between the State government and the officer that the services shall be rendered by him. This is the view of all the American authorities except those of the State of North Carolina. No case has been cited to me from Kentucky, but in the other States the authorities are abundant (State *vs.* Hawkins, 44 Ohio St., 98, 109; Conner *vs.* Mayor, 5 N. Y., 285; State *vs.* Dews, R. M. Charlton (Georgia), 397; *Ex parte* Lambert, 52 Ala., 79; Prince *vs.* Skillin, 71 Maine, 361; State *vs.* Davis, 44 Missouri, 129; State *vs.* Douglas, 26 Wis., 428). It is true that in many of these cases there was no constitutional restriction upon the legislative power to change the salary, but the *ratio decidendi* of each decision was found not in the legislative power, but the nature of the relation of a public officer to the public. It was held to be a trust or agency and not property at all. If the acceptance of an office created a contract right, the legislature could not have impaired it, but the reason why the legislative power could change the salary, in the absence of constitutional restriction, is because election or appointment to an office and acceptance are not a contract. Whether the legislature may change is only a matter of the delegation of legislative power to deal with officers authorized by the constitution; it does not change the nature of the office, which, no matter in whom rests the power of change, is neither property nor a contract right."

The suit at bar was brought under section 480 of the Civil Code of Kentucky, which provides:

"In lieu of the writs of *scire facias* and *quo warranto*, or of an information in the nature of *quo warranto*, ordinary actions may be brought to vacate or repeal charters and to prevent the usurpation of an office or franchise."

Sections 481 and 482 provide that if the action is to repeal a charter it must be in the name of the Commonwealth, and that in certain cases it shall be instituted only by order of the legislature. Section 483 provides that "if a person usurp an office or franchise, the person entitled thereto, or

the Commonwealth, may prevent the usurpation by an ordinary action."

The decision brought here for review is simply to the effect that in such an action the title of the claimant, as finally established by the legislature or other board of contest, must prevail. That decision, we respectfully submit, presents no Federal question, and the writ should be dimissed for want of jurisdiction.

LAWRENCE MAXWELL, JR.,
Counsel for the Defendant in Error.

W. S. PRYOR,
LEWIS MCQUOWN,
Of Counsel.

No. 603 & 604.

Brf. of McQuown for D. E.

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Supreme Court of the United States.

WILLIAM S. TAYLOR AND JOHN MARSHALL,
Plaintiffs in Error,

VERSUS (No. 603.)

J. C. W. BECKHAM,
Defendant in Error.

AND

WILLIAM S. TAYLOR AND JOHN MARSHALL,
Plaintiffs in Error,

VERSUS No. 604.

J. C. W. BECKHAM, ET AL.,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

LEWIS McQUOWN,
Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES

WILLIAM S. TAYLOR AND JOHN MARSHALL,
Plaintiffs In Error,

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Plaintiffs In Error.

VERSUS (No. 604.)

J. C. W. BECKHAM, ET AL.,
Defendants In Error.

BRIEF FOR DEFENDANTS IN ERROR.

I. STATEMENT OF THE CASE.

The first-named case (No. 603) was an action at law, in the nature of a quo warranto, as provided by the Kentucky Code of Practice (section 480), brought by J. C. W Beckham, defendant in error, against William S. Taylor and John Marshall, plaintiffs in error, for usurpation of the offices of Governor and Lieutenant-Governor; and the second-named suits (No. 604) were brought by William S. Taylor and John Marshall, plaintiffs in error, against the said J. C. W. Beckham, for alleged usurpation of the said offices. All the cases, therefore, present the same questions of law and fact.

It is averred in the petition in the first-named action that at the election held on the 7th day of November, 1899, in the

Commonwealth of Kentucky, that William Goebel was the Democratic candidate for the office of Governor, and that J. C. W. Beckham was the Democratic candidate for the office of Lieutenant-Governor, and that at said election the plaintiffs in error, William S. Taylor and John Marshall, were the Republican candidates for the said offices of Governor and Lieutenant-Governor, respectively; that after said election the State Board of Election Commissioners, whose duty it was to canvass the returns from said election, met and determined, from the face of said returns, that the said Taylor and Marshall were elected Governor and Lieutenant-Governor, respectively, for the term commencing December 12, 1899, and accordingly awarded to them certificates showing said facts, and they were thereupon, inducted into the said offices.

It is further averred in the said petition that within the due time allowed by law the said William Goebel and J. C. W. Beckham gave written notices to the said Taylor and Marshall that they would each contest the said election upon numerous grounds, set out, at large, in the respective notices; that said notices of contest, duly executed upon said Taylor and Marshall, were filed before each House of the General Assembly, and entered, at large, upon the journals thereof; that thereafter Boards of Contests were duly selected by each House of the General Assembly, and sworn to try said contests as required by law; that at the time appointed for the hearing the said Taylor and Marshall appeared, and each filed defense and counter notices, and the evidence of contestants and contestees was heard by the boards from January 15, 1900, until January 29, 1900, inclusive, and upon January 30, 1900, the said contests were submitted without argument to said boards for decision; that thereafter, the said boards having considered the matters of law and fact involved in the said contests, did each separately decide the contest submitted to it, and made out, in writing, its said decision, and reported the same to each House of the General Assembly for its action thereon; that in the contest for Governor the Board determined, and so reported to each House of the General Assembly, that William Goebel had received the highest number of legal votes cast for Governor,

at the election held on November 7, 1899, and that he was duly elected Governor for the term beginning December 12, 1899, and that the contestant, Beckham, had received the highest number of legal votes cast at the said election, and was duly elected to the office of Lieutenant-Governor for the said term.

It is also further alleged that the said decisions and reports of the Contest Boards were thereafter duly adopted and approved by both Houses of the General Assembly, in separate and joint sessions; that there were present in the House of Representatives, at the said time, fifty-six members, and in the Senate, nineteen members, which was a quorum of each House, and that there were present seventy-five members in the joint session; that the General Assembly did then and there determine, adjudge and declare that said William Goebel and J. C. W. Beckham had each received the highest number of legal votes cast at said election, and were duly elected Governor and Lieutenant-Governor as aforesaid. Copies of the journals of both Houses of the General Assembly, showing all the proceedings and facts aforesaid, were filed as part of the petition.

It is further alleged that after the determination of the said contests, by the General Assembly, that the said William Goebel and J. C. W. Beckham were sworn and duly inducted into the offices of Governor and Lieutenant-Governor of the Commonwealth, and at once entered upon the discharge of their respective duties; that thereafter, upon the 3d day of February, 1900, William Goebel died and, by law, the said Beckham was required to discharge the duties of the said office of Governor, and, accordingly, upon the said day, he took the oath prescribed by law and immediately entered upon the discharge of the duties of the said office.

The further averment was made in the said petition that the powers of the said William S. Taylor, as Governor, and of John Marshall, as Lieutenant-Governor, immediately ceased upon the determination of the said contests by the General Assembly, but that notwithstanding the premises, the said Taylor and Marshall had usurped the said offices of Governor and Lieutenant-Governor, and had refused, upon demand, to

surrender the records, archives, and journals, and the possession of the executive offices, in the Capitol, in the city of Frankfort.

The prayer of the petition is that the said Taylor and Marshall be adjudged to have ursurped the offices of Governor and Lieutenant-Governor, and that the said J. C. W. Beckham be adjudged entitled to the said office, and that he be placed in the possession of the executive offices in the Capitol, with their records, archives and journals. (Pp. 1-9, Vol. 1 Tr.)

The answer and counterclaim filed by the plaintiffs in error seeks to avoid the material allegations of the petition by alleging, in substance, that the action of the boards and of the General Assembly, in the contests, was the result of a conspiracy, entered into by the members of the boards, and of the General Assembly to wrongfully and unlawfully deprive the contestees of their said offices. It is alleged that in the execution of this design the members of the said boards were fraudulently selected, and not fairly drawn, by lot, as required by law, and that a majority of the boards were partisan friends of the contestants, and a number of them had previously advised that the contests be made.

It is further alleged that when the General Assembly attempted to determine said contests at Frankfort that it had no power to do so, because there was not a quorum present, and for the further reason that William S. Taylor, as Governor, on the 31st day of January, 1900, had adjourned the General Assembly from Frankfort to meet on the 6th day of February, 1900, at London, in Laurel county.

The prayer is that the petition be dismissed; that J. C. W. Beckham be adjudged a usurper of the offices of Governor and Lieutenant-Governor, and that William S. Taylor and John Marshall be adjudged the Governor and Lieutenant-Governor, respectively, of the Commonwealth. (Pp. 10-47, Vol. 1 Tr.)

By an amended answer the plaintiffs in error relied upon the alleged facts that the provisions of the Constitution of Kentucky, and the laws passed in pursuance thereof, giving to the General Assembly the power to determine the contests for Governor and Lieutenant-Governor, vested in the legislative

department judicial power, which was arbitrarily used in the determination of the said contests, and that the exercise of this power, if given effect, will deprive the people of Kentucky of their political liberty, and the plaintiffs in error of the right to hold the offices of Governor and Lieutenant-Governor, without due process of law, which, it is alleged, is in violation of the fourteenth amendment to the Constitution of the United States. (Pp. 58-61, Vol. 1 Tr.)

A demurrer was filed and sustained to the answer, and the defense was adjudged insufficient in the court below, and upon appeal to the Court of Appeals of Kentucky this judgment was affirmed. The cases are in this court on writ of error to the Court of Appeals of Kentucky. The defendants in error have entered a motion to dismiss the writ, because no Federal question is presented, and this court is without jurisdiction. The hearing is upon this motion and the merits.

II. DUE PROCESS OF LAW.

Do the provisions of the Constitution of Kentucky, and the laws made in pursuance thereof, regulating the trial of contested elections for Governor and Lieutenant-Governor, afford due process of law, within the meaning of the fourteenth amendment to the Constitution of the United States? This is the controlling question for determination here.

The power to hear and determine these contests is granted to the General Assembly by section 90 of the present Constitution of the Commonwealth, in the following words:

> "Contested elections for Governor and Lieutenant-Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law."

This section is identical with section 24, article 3 of the third Constitution, adopted in 1850. The corresponding provision in the second Constitution, adopted in 1799, is as follows:

> "Contested elections for Governor and Lieutenant-Gov-

ernor shall be *determined by a committee*, to be selected from both Houses of the General Assembly, and formed and regulated, in such manner, as shall be directed by law." (Sec. 27, Ar. 3)

Section 18, article 1 of the first Constituton, adopted in 1792, contains the same provision.

The first and second Constitutions of the Commonwealth, it will be seen, vested the power to determine the contests in a "committee;" while the third and fourth Constitutions vested the power—

> "In both Houses of the General Assembly, according to such regulations as may be established by law."

The General Assembly, for the purpose of carrying into effect the provisions of the Constitution, enacted a law, which is codified as follows in the Kentucky Statutes:

> "Section 1535. No application to contest the election of an officer shall be heard, unless *notice thereof*, in writing, signed by the party contesting, is given.
>
> "1st. The notice shall state the *grounds of the contest*, and none other shall be heard as coming from such party; but the contestee may make defense without giving counter notice.
>
> "2d. In the case of an officer, elective by the voters of the whole State, or any judicial district, the notice must be given *within thirty days* after the final action of the Board of Canvassers.
>
> "Section 1596a. When the election of a Governor or Lieutenant-Governor is contested, a board for determining the contest shall be formed in the following manner:
>
> "1st. On the third day after the organization of the General Assembly which meets next after the election, the Senate shall select, by lot, three of its members, and the House of Representatives shall select, by lot, eight of its members, and the eleven so selected shall constitute a board, seven of whom shall have power to act.
>
> "3d. The members of the board, so chosen by the two Houses, shall be sworn by the Speaker of the House of

Representatives to try the contested election and give true judgment thereon, according to the evidence, unless dissolved before rendering judgment.

"4th. The board shall, within twenty-four hours after its election, meet, appoint its chairman, and assign for hearing the contest, and adjourn from day to day, as its business may require.

"5th. If any person so selected shall swear that he can not, without great personal inconvenience, serve on the board, or that he feels an undue bias for or against either of the parties, he may be excused by the House from which he was chosen from serving on the board; and if it appears that a person so selected is related to either party, or is liable to any other proper objection on the score of his partiality, he shall be so excused.

"6th. Any deficiency in the proper number so created shall be supplied by another draw from the box.

"7th. The board shall have power to send for persons, papers and records, to issue attachments therefor, signed by its chairman, swear witnesses by its chairman or clerk, and issue commissions for taking proof.

"8th. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election, as provided herein, shall be ordered to fill the vacancy, provided the first two years of his term shall not have expired. Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.

"9th. No decision shall be made but by the vote of six members. The decision of the board shall not be final nor conclusive. Such decision shall be reported to the two Houses of the General Assembly, for the future action of the General Assembly. And the General Assembly shall then determine such contest." (Subsec. 9 of Sec. 8, Act March 11, 1898.)

"10th. If a new election is required, it shall be imme-

diately ordered by proclamation of the Speaker of the House of Representatives, to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

"11th. When a new election is ordered, or the incumbent adjudged not to be entitled, *his powers shall immediately cease*, and if the office is not adjudged to another it shall be deemed to be vacant."

Section 1, article 7, Revised Statutes of Kentucky (adopted in 1852), and sections 6 and 7 of the act of December 21, 1799 (1 M. & B., pp 593-4), provide in substance the same procedure for the organization of the boards and the trial of contested elections for Governor and Lieutenant-Governor as now provided by the above statute.

Do these provisions of the Constitution and statutes afford due process of law, within the meaning of the fourteenth amendment to the Constitution?

In a case concerning a contest for office the court, in discussing this question, said:

> "A State statute regulating proceedings for the removal of a person from a State office was not repugnant to the Constitution of the United States, if it provided for bringing the party against whom the proceeding was had into court and notifying him of the case he had to meet, for giving him an opportunity to be heard, in his defense, and for the deliberation and judgment of the court." (Foster v. Kansas, 112 U. S., 206.)

It will be perceived that by the provisions of the Kentucky Statute notice of the contest, specifying the grounds, must be given within thirty-days after the action of the Canvassing Board; the members of the board must be selected by lot and sworn to try the contest, and "give true judgment thereon, according to the evidence;" the board is required to assign "a day for hearing the contest," and may adjourn from day to day; it has power to compel the attendance of witnesses and to swear them; it may compel the production of papers and records; six members of the board may render a decision, which

must be reported to both Houses of the General Assembly, which shall finally determine the contest.

Thus it will be seen that a hearing, after reasonable notice, is provided; and this is all that due process of law means. It is not necessary that the process should issue from a court, or that the hearing should be by a judicial officer. Neither is it necessary that there should be a trial by jury.

> "Due process of law is process due according to the law of the land. This process in the States is regulated by the law of the State. Our power over the law is only to determine whether it is in conflict with the supreme law of the land—that is to say, with the Constitution and laws of the United States made in pursuance thereof." (Walker v. Saurinet, 92 U. S., 90.)
>
> "It is clear that the fourteenth amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice, and affords a fair opportunity to be heard, before the issues are decided." (Iowa Central Railway Co. v. Iowa, 160 U. S., 392.)

The law of very many States on this subject is the same as the Kentucky Constitution and statute. There is a constitutional provision in Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Mississippi, Missouri, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Virginia and West Virginia which either vests the power to determine contested elections for Governor and Lieutenant-Governor in a committee selected from the General Assembly, or in the two Houses themselves, with procedure like that provided in the Kentucky statute.

Thus, for example, the Constitution of Pennsylvania, adopted in 1874, contains the following provision:

> "Contested elections shall be determined by a committee, to be selected from both Houses of the General Assembly, and formed and regulated in such manner as shall be directed by law." (Sec. 2, Ar. 4.)

By the Pennsylvania statute the committee is selected by lot, hears the case and determines it, just as the Board of Contest does under the Kentucky Statute. The only point of difference is that in Pennsylvania the report of the committee is final and conclusive, while in Kentucky the General Assembly determines the contest, after the report is made to both Houses. (Secs. 209, 212 and 225, Chap. on "Elections," Brightley's Purdon's Digest, Laws of Pennsylvania.)

Section 5, article 4 of the Constitution of Iowa, which was adopted in 1857, is identical with section 90 of the present Constitution of Kentucky, and the statute of Iowa, enacted to regulate the procedure in contested elections, is, in substance, the same as the Pennsylvania and Kentucky statutes. The judgment of the committee there is conclusive. (Secs. 1242, 1243 and 1245, Iowa Stat.)

If the objection to the provisions of the Kentucky Constitution and statutes is sustained, in this case, it will be seen that the corresponding provisions in the organic laws of all the States referred to are likewise invalid. It is certainly remarkable that such wide-spread error should exist in reference to what is due process of law, and what is the exercise of merely arbitrary power, within the meaning of the fourteenth amendment to the Constitution.

But it is complained that by the administration of the statute the Board of Contest deprived the plaintiffs, in error, of their offices without due process of law; that they were not allowed to introduce all their proof, and that counsel for them were not permitted to argue the case before the board, and that the evidence did not authorize the judgment of the board or of the General Assembly.

More than one hundred and fifty witnesses testified in the case. More than one hundred of these testified for the plaintiffs in error. The hearing commenced January 15 and continued till near midnight of January 29, 1900. The argument was to begin at 2 o'clock on the afternoon of January 30. Near high noon of that day William Goebel was assassinated in the Capitol grounds, while on his way to the Senate of Kentucky.

Under these circumstances the cases were submitted without argument.

It may, or may not have been, an abuse of discretion to thus submit without argument, or to prevent the plaintiffs in error from introducing their witnesses to the number of *two thousand*, which, it is alleged, they desired to do; but when the fact is recalled that it required fifteen days to hear one hundred and fifty witnesses; that the session of the General Assembly which began January 2, 1900, was limited to sixty days, and that one-half of this time had already expired, it is apparent that it would have been impossible to hear the witnesses of plaintiffs in error within the limits of the session. By law the board was dissolved by the termination of the legislative session.

But at most these rulings of the board were errors or mistakes of judgment, by the officers charged with the administration of the law, and do not authorize this court to assume jurisdiction upon the ground of the faliure of due process. This court could not review the orders and rulings of an inferior judicial tribunal of the State under like circumstances, and for this cause, has no jurisdiction to revise the action of the Board of Contest or the General Assembly. This rule is well settled.

> "If the State *provides* 'due process,' and does not deny 'equal protection,' and the *State court departs from these statutory provisions by an erroneous decision, there is no relief.* The State has not failed to provide 'due process,' but its court *has* against its legal provisions." (Tucker on Con., Sec. 390.)
>
> "The statute under which the court acted would have furnished Arrowsmith all the protection which had been guaranteed to him by the Constitution of the United States. The Legislature of a State performs its whole duty under the Constitution when it provides a law for the government of its courts, while exercising their respective jurisdictions, which, if followed, will furnish the parties the *necessary constitutional protection. All after*

that pertains to the courts." (Arrowsmith v. Harmoning, 118 U. S., 243.)

"The question before us is not whether the courts below, having jurisdiction of the case and the parties, *have followed the law*, but whether the law, if followed, would have furnished Kennard *the protection guaranteed by the Constitution.* Irregularities and mere errors in the proceedings, can only be corrected in the State courts. *Our authority does not extend beyond an examination of the power of the courts below to proceed at all.*" (Kennard v. Louisiana, 92 U. S., 480.)

The Constitution and statute of the State having provided a tribunal to determine the contest, and having regulated the procedure therein, and "due process" and "equal protection" having been provided by this law, the errors of the board, if any, in the discharge of its duties, under the law, do not confer jurisdiction here. The deprivation of an office, or of property, by the erroneous judgment of such a tribunal is not within the inhibition of the fourteenth amendment.

In the leading case of Wilson v. North Carolina, 169 U. S., 586, it appeared that by a statute of the State of North Carolina the Governor was authorized, without notice or hearing, to suspend one or more of the Railroad Commissioners, and make report of the fact, together with the reason for the suspension, to the next General Assembly, which was invested with the power to remove such commissioner. The Governor was authorized, in the meantime, to fill the vacancy in the office created by the suspension.

In the exercise of this power the Governor suspended Wilson, one of the commissioners, and notified him of the fact. He demanded the charges against him and the right to be heard. His demand was refused by the Governor, who filled the vacancy by the appointment of another commissioner.

Wilson declined to surrender the office, and an action, in the nature of quo warranto, was brought against him. He defended upon the ground that he had been deprived of his office, without due process of law, and deprived of the equal protec-

tion of the law, in violation of the fourteenth amendment to the Constitution of United States.

The case came before this court on a writ of error. On motion to dismiss for want of jurisdiction, because the record did not present a Federal question, the court said:

> "We are of opinion that the plaintiff in error was ***not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceeding before the Governor***, under the statute above mentioned, and resulting in his suspension from office.
>
> "The procedure was in accordance with the Constitution and laws of the State. It was taken under a valid statute, creating a State office in a constitutional manner, as the State court has held. ***What kind and how much*** of a hearing the officer should have before suspension by the Governor was a matter for the ***State Legislature to determine, having regard to the Constitution of the State.***
>
> "In its internal administration the State (so far as concerns the Federal Government) has entire freedom of choice as to the creation of an office for purely State purposes, and of the terms upon which it shall be held by the person filling the office. And in such matters the decision of the State court, that the procedure by which an officer has been suspended or removed, was regular, and was under a constitutional and valid statute, must generally ***be conclusive on this court.***

This opinion seems conclusive of the question here. The statute there upheld vested in the Governor the power to suspend without notice or hearing, while the power to remove the official was vested in the General Assembly. If this be due process of law, and be not the exercise of arbitrary power, it would seem to follow that a procedure which provides for a hearing, after notice, before the Contest Board and the General Assembly, was legally sufficient. While the statute did not authorize the *removal* of the commissioner by the Governor, but only his *suspension*, the principle is the same. The suspension may be for a year, or longer, until the General As-

sembly shall convene. To deprive the incumbent of his office for this length of time, by suspension, requires as great a stretch of power as to remove him altogether.

The office of Governor was created by the Constitution. The powers and duties pertaining to the office are prescribed by that instrument. When a citizen becomes a candidate for that office, and, being elected thereto, accepts it, he does so subject to these provisions of the Constitution, and consents that if his election is contested that the contest shall be determined by the General Assembly. To borrow an expression from the court in the case just cited, these are the terms upon which the office is held. Even if the office be considered property, the title is conferred and accepted, subject to be divested by the procedure provided by the Constitution, which creates it. In this respect there is a marked difference between the deprivation of an office by a procedure prescribed by the Constitution, which creates the office, and the taking of property by such procedure. Property is not created by the Constitution, nor does the citizen hold title by virtue of that instrument. To deprive one of his property is, therefore, a different thing from depriving him of his office.

But the great weight of authority is that there is *no property in an office*, and hence the deprivation of an office, without due process, does not fall within the inhibition of the Constitution.

In the leading case of Smith v. Mayor, 37 N. Y., 520, the court said:

> "An office is simply an appointment or authority on behalf of the government to perform certain duties, usually at and for a certain compensation. Both the office itself and the compensation, upon general principles of law, are entirely within the control of the government, to diminish, increase or abolish. So it may, at any moment, be given up by the incumbent. There can be neither *property nor contract* in such a subject."

The Court of Appeals of Kentucky has adopted this view.

In the case of Standeford v. Wingate, 2 Duvall, 443, it was said:

> "An office established and held for the public good is not a contract, nor its tenure secured by any binding contract; the incumbent functionaries hold not by contract, but at the will of the Legislature."

The following cases hold that an office is not property, and may be abolished by the power which created it:

State v. Hawkins, 44 Ohio St., 109;

State v. Davis, 44 Mo., 129;

Conner v. Mayor, 5 N. Y., 296;

State v. Douglass, 26 Wis., 431.

In the case of Wilson v. North Carolina, 169 U. S., 586, this court held that it was concluded by the decision of the Supreme Court of that State as to the proper construction of the statute there drawn in question, and that this statute was not violative of the Constitution of North Carolina. The only question left for review, then, was stated by the court to be whether the plaintiff in error had been deprived of his property without due process of law.

The only property involved, and which it was claimed the plaintiff in error had been deprived of, was *his office*. While this court did not distinctly decide that an office is not property within the meaning of the fourteenth amendment, yet the court said:

> "Upon the case made by the plaintiff in error the Federal question which he attempts to raise is so *unfounded, in substance*, that we are justified in saying that it does not really exist; that there is no fair color for claiming that *his rights, under the Federal Constitution*, have been violated, either by depriving him of his property, without due process of law, or by denying to him the equal protection of the laws."

Finally, this court said in the Wilson case:

> "We should be very reluctant to decide that we had

> jurisdiction in such a case, and thus, in an action of *this nature, to supervise and review the political administration* of a State government, by its own officials, and through its own courts."

If such jurisdiction should be assumed by this court it is respectfully suggested that the consequences would be disastrous. The determination of the result of an election is purely a political question, and the agencies provided by the several States for decision of contested elections are summary in their nature. The object was to prevent the delays incident to procedure in the courts, and to relieve the ordinary tribunals of justice from the excitement which these cases usually beget. But if jurisdiction is assumed in this case, it may well be asked, where will it end?

The Constitutions of the several States contain provisions similar to section 38 of the Kentucky Constitution, by which it is provided that—

> "Each House of the General Assembly shall judge of the qualifications, elections and returns of its members, but a contested election shall be determined in such manner as shall be directed by law."

The phraseology of this section is substantially the same as section 90, relating to contested elections for Governor and Lieutenant-Governor. If the seat of a member of the General Assembly should be contested and the House to which he belonged, on hearing the contest, should unseat him, might he not maintain an action, and alleging his election and induction into office, aver that the General Assembly ousted him in pursuance to a conspiracy, or that there was no evidence before it of the grounds of contest alleged, or that a quorum was not present, or that the House refused to hear argument, or that the committee refused to hear evidence or argument, or that it was not fairly drawn, by lot, or that it was composed of the partisan friends of the contestant, or members who had advised the contest, or that, finally, the majority which unseated him had agreed with the contestant, in ad-

vance, to unseat the contestee, and that the clerk of the House had also joined the conspiracy and had fraudulently and falsely kept the journal so as to conceal the facts? Might it not be alleged in such a petition, as it has been here, that by the arbitrary power of the General Assembly, and without due process of law, the contestee had been deprived of his property, and the people of the Commonwealth who elected him had also been deprived of their political liberty?

If the relief asked here may be granted, the action suggested may be maintained, and if this case raises a Federal question, so would that. If a member of the General Assembly, who may be unseated, can maintain the action, then a member of the Congress of the United States may, upon similar allegations, also sue, and all these cases find their way to this court for final determination.

If this court shall hold that it has jurisdiction, the apprehensions expressed by Mr. Justice Miller, in Davidson v. New Orleans, 96 U. S., 104, may be realized. Concerning the number and character of the cases which have been brought here under the fourteenth amendment, he said:

> "In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decision of this court the abstract opinions of every *unsuccessful litigant in a State court of the justice of the decision against him, and of the merits of the legislation on which such a decision may be founded.*"

If to the vast number of cases of which the courts have jurisdiction shall be added the cases which will arise in contested elections, the numbers will be increased beyond even the apprehension of the learned justice, who certainly viewed with alarm the crowded dockets of this court. Confusion and interruption of the public affairs of the States will follow this flood of litigation, and the conflicting claims of rival officials will doubtless result in violence or bloodshed during the delays

incident to appeals, for it is safe to say that all cases can not, or will not, be speeded as these have been.

It is insisted that the motion to dismiss the writ should be sustained, because there is no color of a Federal question presented; but inasmuch as the case is heard on the merits, as well as on the motion, further argument will be presented on other questions which arise on the record.

III. THE JUDGMENT OF THE GENERAL ASSEMBLY IS CONCLUSIVE.

The defendant in error, J. C. W. Beckham, claims title to the office of Governor, by succession from William Goebel. The title of Goebel, as Governor, and of Beckham, as Lieutenant-Governor, is shown by the journals of the two Houses of the General Assembly. Defense to the action has been made, and the force of the facts shown by the journals sought to be avoided by allegations of fraud, not only against the members of the Boards of Contests, but against all the members of the General Assembly—seventy-five in number—who voted for the approval and adoption of the report of the boards.

By section 90 of the Constitution of Kentucky, and the statutes passed in pursuance thereof, the General Assembly has been clothed with exclusive and final jurisdiction of contests for the offices of Governor and Lieutenant-Governor.

No other tribunal or court, under any form of proceeding, or in any mode, has jurisdiction to determine the questions involved, or review the action of the General Assembly. Its judgment is conclusive; its jurisdiction is exclusive.

Upon the ground of public policy the law makers have invested the General Assembly with this plenary and final jurisdiction for the determination of these contests. No provision is made for an appeal or review by the judicial tribunals, because it was not intended that they should have jurisdiction over the contest.

This is the universal rule as to the ordinary tribunals created for the trial of contested elections. Thus, in Batman v. Me-

gowan, 1 Met., 533, which was a proceeding by mandamus to compel the County Contest Board to take action, this court held that in the absence of a statute allowing an appeal, the decision of the Contesting Board was final and conclusive as to all questions, both of law and fact. The courts can not, in the absence of direct authority, adjudicate such questions, or decide such contests.

In the case of Stine v. Berry, 96 Ky., 63, the court reaffirmed this rule. It said:

> "We understand, and so adjudge, that the statute in regard to contested elections for State and county offices is exclusive, and that when a mode of contest is provided in a city charter for contesting the election of city officers it excludes any other remedy. Such statutes are enacted with remedies providing for the speedy determination of such questions, and to take from the courts all original supervisory power over such contests."

In this last case the contest was concerning the office of Mayor of the city of Newport. The contest was determined by the city council, under an ordinance which authorized it to hear and determine the contest for city officers. No appeal to the courts or other tribunals was provided for. Concerning an objection, based upon this ground, the court said:

> "The fact that the city charter fails to give either party the right of appeal from the decision of the contesting board can make no difference; it was the remedy provided by the city charter, and was deemed ample protection by the Legislature."

Much has been said in this case, in argument, against the exclusive jurisdiction of the General Assembly, because no appeal is provided for by the Constitution or statute. It has been insisted for this reason that there is implied power or jurisdiction in the courts to review the proceedings upon an allegation of fraud, or denial of due process of law. But these cases conclusively establish the contrary doctrine.

The purpose of excluding the trial of contests from the courts was said, in Newcum v. Kirtly, 13 B. Mon., 517—

> "To prevent the ordinary tribunals of justice from being harrassed, and indeed overwhelmed, with investigations, and involved in the excitements to which these cases may be expected to give rise."

And in the Batman case it was said that—

> "The Legislature evidently intended to accomplish a two-fold purpose: A speedy and summary mode of deciding cases of contested elections and determining finally and conclusively which one of the claimants was entitled to the office."

For the same reasons, and upon the same views of public policy, the makers of the Constitution conferred exclusive jurisdiction upon the General Assembly to determine the contests for the offices of Governor and Lieutenant-Governor. The provisions of the Constitution and of the statute relating to these contests accord with the settled policy of the State for more than a century. If a speedy determination of the contests for minor county offices be of such importance, how much more important is it to the people of the Commonwealth that a contest involving the offices of Governor and Lieutenant-Governor should be speedily settled? It is of more importance, indeed, to the Commonwealth that the contest should be settled in a summary way than that it should be determined in favor of the one or the other of the parties to it.

In the leading case of Baxter v. Brooks, 29 Ark., 182, the court held that the jurisdiction of the General Assembly, under the Constitution of the State, to try and determine contests for the office of Governor was exclusive, and that the courts had no power or authority to review the legislative action. In that case the court said:

> "The office of Governor does not exist by common law. It is a creation of the Constitution. And it is well settled that where a new right, or the means of acquiring it, is conferred by a Constitution or a statute, and an adequate

remedy for its infringement is given by the same authority which created the right, the parties injured are confined to the redress thus given."

In a review of this contest, quoted in the opinion, Judge Cooley said:

"To our mind there can be *no plausible suggestion* that the decision of the General Assembly on *such a contest is open to judicial review afterwards.*"

In an exhaustive opinion, also quoted at length by the court, Hon. Geo. H. Williams, Attorney-General of the United States at the time, concurred with the court and with Judge Cooley in holding that the determination of the contest by the General Assembly was not subject to judicial review.

The same rule was announced and adhered to by the Supreme Court of Ohio, in Grisel v. Marlow, 15 Ohio St., 114; and in Stearns v. Wyoming, 53 Ohio St., 352, the rule was upheld and applied to the determination of a contested election by a city council; and the Supreme Court of Louisiana, in Reynolds v. Ouachita, 11 South. Rep., 236, declared that in the absence of statutory authority the court could neither review nor determine election contests.

This court, in Martin v. Mott, 12 Wheat., 19, in an opinion by Judge Story, said:

"Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the Constitution constitutes him the sole and exclusive judge of the existence of those facts."

So it is here. By law the General Assembly has been constituted the sole and exclusive judge of the matter of law and of fact involved in a contest for these offices, and its determination is final and conclusive. But it was urged in the court below, with great earnestness, that, although there be no appeal allowed, the courts have the right, upon an allegation of fraud, to review the determination of the General Assembly

in these contests, just as the judgment of a court might be reviewed. This extraordinary and revolutionary proposition brings me to a discussion of the question whether the journals showing the decision of the General Assembly may be impeached or contradicted.

IV. THE LEGISLATIVE JOURNALS IMPORT VERITY.

The proposition contended for by plantiffs in error is that the courts may go behind the journals and investigate the alleged facts.

Has the judiciary the jurisdiction or power to institute and conduct such an inquiry? If so, whence is it derived? It is believed that the right has been asserted, in this case, for the first time in the history of the Commonwealth, and in view of the importance of the question, and its effect upon this case, it is proper that it should receive careful consideration by counsel and court.

By section 27 of the Constitution the powers of the government of the Commonwealth were divided into three distinct departments, and each of them was confided to a separate body of magistracy: "Those which are legislative to one, those which are executive to another, and those which are judicial to another." Each of these departments is separate and distinct from the others, and by section 28, as a further guaranty against interference, it is provided that "no person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to the others, except in the instances hereinafter directed or permitted."

By these provisions of the Constitution the independence of each department of the government was secured. The proposition underlying the grounds of defense here, if sustained, would strip the legislative department of this independence, and render it subject to the arbitrary will of each of the other departments. If the motives of the General Assembly may be inquired into in respect to *one* or *any* of its acts, it would seem to follow that such inquiry may be made concerning *all of its*

actions and proceedings. If it may be adjourned once by the arbitrary will of the Governor, it may be adjourned an indefinite number of times to an indefinite number of places, and thus prevented by a corrupt executive from the orderly discharge of its duties at any time or place. If permitted by the executive to remain in session, at any time or place long enough to enact a law, or discharge any other duty imposed upon it, the courts may hold its proceedings void because of supposed corruption of its members.

If the powers, thus asserted, exist in the executive and judicial departments of the government, the General Assembly can never remain in session at any time or place except by the consent of the Governor, and can take no step or proceeding in the discharge of its official duty except its motives may be questioned by the courts. Instead of being an independent coordinate branch of the government, all the powers of the General Assembly would be exercised in subordination of the other departments.

The policy of our Constitution and laws has assigned to the different departments of the State government distinct and different duties, in the performance of which they are entirely independent of each other; so that whatever power or duty is expressly given or imposed upon one of these departments is altogether free from the interference of either of the others. Especially is this the case when the subject is committed to the discretion of either department. Each official is responsible for the discharge of his duty, not to the courts, but to the people, and the motives which induced him to act may not be inquired into by any member of another department.

Mr. Cooley has stated the rule as follows:

> "Although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the Legislature where fraud and corruption were alleged, and annul their action, if the allegations were established, the argument has, in no case, been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the Governor, in the

> exercise of a discretion invested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people." (Cooley's Con. Lim., p. 228.)

This statement of the rule by the most eminent commentator upon constitutional law which our country has produced finds support in the decision of every court before which the question has been presented.

By section 40 of the Constitution of Kentucky it is provided that—

> "Each House of the General Assembly shall keep and publish daily a journal of its proceedings."

The universal rule is that this journal imports absolute verity, and may not be impeached or contradicted in the courts, upon an allegation of fraud or mistake. The rule rests upon the ground that the legal effect of the record of the General Assembly, solemnly made in pursuance to the mandate of the Constitution, can not be denied or destroyed by judicial action. The rule applies whether the action of the General Assembly is assailed in the passage of a law, or the performance of any other duty imposed by the Constitution. The reason for the rule is that the General Assembly is an independent department of the government, and if its actions may be questioned by the judiciary, or the verity of its records denied, this independence will thereby be destroyed.

In this case every fact upon which the title to the office of Governor depends is shown by the journals. If they can not be impeached, there is an end of this controversy. If they may be, it has scarcely begun.

It may be asserted that the courts, State and Federal, are in perfect harmony in support of the proposition laid down by Judge Cooley. The rule not only applies when a law passed by the Legislature, or Congress, is questioned, but also when any act done by either body, and shown by the journal, is assailed. The statements of the journals import absolute verity in such case.

Thus in Tameling v. United States Freehold Company, 93

U. S., 644, it appeared that Congress reserved to itself the determination of conflicting land claims, under Mexican grants, in New Mexico and Arizona, and had provided by law that the Surveyor-General for the Territory should hear evidence and report to Congress the origin, nature and extent of such claims, together with his opinion as to their validity. The action and decision of the Surveyor-General, and the determination by Congress, in each case, was held conclusive. In passing on the question the court said:

> "No jurisdiction over such claims was conferred upon the court, but the Surveyor-General, in the exercise of the authority with which he was invested, decides them in the first instance. The final action on such claim, reserved to Congress, is, of course, conclusive, and, therefore, not subject to review in this, or any other, forum. It is obviously not the duty of this court to sit in judgment upon either the recital of matters of fact by the Surveyor-General, or his decision declaring the validity of the grant."

Under this authority the finding of fact by the Contest Boards, reported to each House of the General Assembly and shown by the journals, is protected from impeachment, as well as the action of the General Assembly. The Contest Board occupies the same attitude toward the General Assembly under the Constitution and laws of Kentucky which the Surveyor-General occupied toward Congress. The report of each was in like manner protected.

In the case of the United States v. The Old Settlers, 148 U. S., 466, the court said:

> "It is not within the province of a court, either of law or equity, to determine that a treaty, or an act of Congress, had been procured by duress or fraud, and declare it inoperative for that reason."

So in the case of the United States v. The Des Moines Company, 124 U. S., 544, in passing upon this point the court declared that—

> "*The knowledge and good faith of a Legislature are not open to question. It is conclusively presumed that a Legislature acts with full knowledge and in good faith.* It is true that the bill alleges that the act was induced by the Navigation Company, by false representations and threats of suits; but *such allegations amount to nothing.*"

So it is with the averments as to the legislative action in this case. Being opposed to the conclusive presumption which this court has said exists as to the good faith and knowledge of the General Assembly, they "amount to nothing." Relying upon this solemn declaration of this court, defendants in error, *for the purpose of the demurrer only*, but not because they were true, admitted these allegations. This course was pursued by counsel as the only speedy way of reaching a determination of these cases, which otherwise would have exhausted the patience of the people of the Commonwealth, as well as the parties and counsel.

The rule is thus clearly established in the Federal courts. In the State courts the same doctrine has been announced without dissent, and sustained by the clearest and most forcible reasoning.

McCullogh v. State, 11 Ind., 425, was a proceeding by quo warranto against certain persons claiming to exercise a franchise under an act of the General Assembly of the State. It was charged that the act did not receive the votes of certain-named members of the General Assembly, but that their *names were fraudulently recorded in the journal as having been present and voting for the bill.* The court said:

> "The facts thus alleged raise the question whether the journals of the Houses of the General Assembly can be contradicted or impeached on the ground of fraud or mistake. The affirmative of this inquiry can not, in our opinion, be maintained. Article 4, section 12 of the Constitution requires each House to keep a journal of its proceedings, and publish the same. This journal must be held

conclusive evidence of the facts which appear on its face, because it must be presumed that the members, as a body, inspected it and made all necessary corrections before they allowed it to assume the character of a journal of their proceedings. As well might evidence be received to contradict a statute, to show that it contained certain provisions inserted through mistake, as to contradict an entry upon the journal.

"The House keeping the journal is the *only tribunal by which it can be corrected*, and until corrected, by such authority, it must be considered *conclusive as to the facts which it contains*.

"We must, therefore, hold that the members alleged to have been absent when the bill passed over the veto of the Governor *were present and voted*, as averred in the journal; and that McMuney *did* vote in favor of the bill on its final passage, in the House."

Wright v. Defrees, 8 Ind., 298, was likewise a quo warranto proceeding against certain persons to prevent them from exercising a franchise under an act of the General Assembly. The complaint alleged that the act referred to was procured to be passed by the General Assembly "by fraud, corruption and bribery." In passing on the question thus presented the court said:

"The powers of the three departments are not merely equal—they are exclusive in respect to the duties assigned to each. They are absolutely independent of each other. It is now proposed that one of the three powers shall institute an inquiry into the conduct of another department, and form an issue to try by what motives the legislators were governed in the enactment of a law. If this may be done, we may also inquire by what motives the executive is induced to approve a bill, or withhold his approval; and, in case of withholding it corruptly, by our mandate compel its approval. To institute the proposed inquiry would be a direct attack upon the independence of the Legislature, and a usurpation of power subversive of the Constitution."

The doubt expressed in this case as to whether the State might not have some right, in a proceeding of this character, which the citizen did not have was directly considered by the same court in the case of McCullogh v. State, just cited, where the court said:

> "We know of no principle or authority upon which *an issue of that character can, in any case, be tried before a judicial tribunal.*"

In the case of State v. Moffitt, 5 Ohio, 223, the question was first presented in that State. By the Constitution it was provided that certain-named judges should "be appointed by joint ballot of both Houses of the General Assembly." The journal of the House of Representatives showed that Samuel Moffitt was elected, as one of said judges, while the journal of the Senate showed the election of Lemuel Moffitt. Lemuel Moffitt qualified, and a proceeding of quo warranto was instituted against him. He showed by the depositions of members and officers of the General Assembly that Lemuel and not Samuel Moffit was the individual voted for and elected.

The court held that the journal could not be contradicted by parol.

> "The testimony of an individual member could not be received to contradict a statute, and if not, why receive it to contradict an entry upon the journal?"

The Court of Appeals of Kentucky, in passing upon this question, said:

> "We have no more right to supervise the decision of the General Assembly in determining the result of this election than we have to supervise the action of the Governor in calling a special session of the Legislature, or in pardoning a criminal, or the action of the Legislature in contracting debts, or determining upon the election of its members, or in doing any other act authorized by the Constitution." (Vol. 1, p. 150, Tr.)

In the Sunbury & Erie R. R. Co. v. Cooper, 33 Penn. St.,

283, an act of the General Assembly was attacked for fraud. In passing on the question, the court said:

> "May the judiciary sit in judgment upon a charge that the legislators have been faithless to their oaths, to the Constitution and to the public interests, by passing a law that is a fraud upon the State? This question was not discussed, and yet unless it can receive an affirmative answer all the argument, on this branch of the subject, must be regarded as out of place.
>
> "We can not hesitate one moment on this question. We have no such authority, and ought not to have. However far the Legislature may depart from the right line of constitutional morality, we have no authority to supervise and correct their acts, on the mere ground of fraudulent or dishonest motives. We know of no such check upon legislation, and would not desire to have such a one instituted. The remedy for such an evil is in the hands of the people alone, to be worked out by an increased care to elect representatives that are honest and capable. If the judiciary have such authority, then any justice of the peace is competent to sit in judgment upon any act of legislation which disorderly moralists, or knavish or ignorant anarchists, may choose to charge as fraudulent. Nay, more; if the question may be raised in a judicial proceeding, the judges and justices of the peace will be bound to investigate and decide it; and the principal judicial business might then become that of testing, not cases by the standard of the law, but the standard itself by the infinitely various and uncertain judicial notions of morality."

In Wise v. Bigger, 79 Va., 269, this question was presented and passed upon by the Supreme Court of Virginia. The case was mandamus to compel the clerk to strike from the rolls a certain act of the General Assembly upon the ground that it did not receive the requisite number of votes. The court held that it could not—

> "Inquire into or dispute the veracity of the certificate, and that the evidence furnished in the journal of the pro-

ceedings of the Senate imports absolute verity, and can not be disputed."

In Attorney-General v. Rice, 64 Mich., 385, it appeared that, as a matter of fact, the title of a bill to organize a specified township was introduced, and afterward a bill was substituted to organize a different township. The court said:

"The question then arises, can it be shown, by parol, in contradiction of the legislative journal, that in fact a skeleton bill, or no bill at all, was introduced? The Constitution provides that 'each House shall keep a journal of its proceedings, and publish the same except such parts as may require secrecy.'

"Are these journals kept by the clerks of each House, and read and corrected each day by each body and duly certified by the proper officers to be correct, to stand as conclusive evidence of their proceedings, or are they liable to be disputed and overthrown by parol testimony, either of individual officers and members, or of strangers, who may be interested in nullifying legislative action? It would seem that there can be but one answer. The legislative record must prevail. Any other ruling would necessarily lead to dangerous and alarming results."

In Pangbaum v. Young, 32 N. J., 40, the court said:

"In the structure of the government of this State the judicial and legislative departments are made co-equal, and it nowhere appears that the one has the right of supervision over the other. It is true, as was much pressed on the argument, that the Legislative branch may willfully infringe constitutional prescriptions. But the capacity to abuse power is a defect inherent in every human government, and yet nevertheless the forces of government must be reposed in some hands. The prerogative to make, to execute and to expound the laws must reside somewhere. Depositories of these great national trusts must be found, though it is certain that such depositories may betray the confidence thus reposed in them. In the frame of our State government the recipients and organs of

this three-fold power are the legislature, the executive and the judiciary, and they are co-ordinate—in all things equal and independent; each within its sphere is the trusted agent of the public. With what propriety, then, is it claimed that the judicial branch can erect itself into the custodian of the good faith of the legislative department? It is to be borne in mind that the point now touched does not relate to the capacity to pronounce a law, which is admitted to have been enacted, void, by reason of unconstitutionality. That is clearly a function of judicature. But the proposition is, whether, when the legislature *has certified to a mere matter of fact relating to its own conduct and within its own cognizance, the courts of the State are at liberty to inquire into or dispute the veracity of that certificate.* I can discover nothing in the provisions of the Constitution, or in the general principles of government, which will justify the assumption of such superior authority."

To these authorities may be added many others:
Cohn v. Kingsley, 38 L. R. A., 78;
Carr v. Coke, 28 L. R. A., 737;
Blaine Co. v. Herr, 45 Pac. Rep., 890;
State v. Cordozo, 5 Rich., 312;
Humbolt Co. v. Churchill, 5 Nev., 339;
Spear v. Major, 85 Ga., 49;
Grisel v. Marlow, 15 Ohio St., 114.

There is no authority, State or Federal, to be found which will authorize the impeachment of the legislative journals, nor sustain the collateral attack upon the final judgment of the General Assembly, whether it be the passage of a law or any other official act. In Kentucky a judgment may be assailed and set aside for fraud, but it must be by proceedings in the court which rendered such judgment. The forum in which the fraud was committed may correct it. But here the appeal is to the judiciary to set aside a solemn determination made by the General Assembly which, by the Constitution, has exclusive jurisdiction of the matter. When a judgment is set aside for fraud, by a court, a new trial is granted to the complaining

party. If the judgment of the General Assembly shall be set aside, will the court order it to again assemble and retry the contest? If so, whence is this power to convene the General Assembly in extraordinary session derived?

The decision of the General Assembly, considered simply as a judgment, can not be collaterally attacked—the journals which evidence this judgment may not be impeached.

Happily for us, the extraordinary contention of appellants has never received the sanction of any court, Federal or State. Whatever may be the difference of opinion as to whether the General Assembly decided correctly the questions of fact submitted to it, in the contested election case, there can be no serious question that the law will allow no collateral attack upon the solemn judgment which ended that memorable contest. No authority has been produced at any hearing of this case, and none can be found, in which any court has sustained its jurisdiction to inquire into the motives which actuated the members of the General Assembly, in the discharge of their duties.

A sufficient answer to all that counsel have said as to the alleged wrongs without remedy, unless this court shall assume jurisdiction of this case, is found in the words of the late distinguished Chief Justice of this court:

> "For protection against abuses by Legislatures the people must resort to the *polls*, not to the *courts*." (Munn v. Illinois, 94 U. S., 134.)

V. THE POWER OF THE GOVERNOR TO ADJOURN THE GENERAL ASSEMBLY.

It is insisted by the plaintiffs in error that Wm. S. Taylor, as Governor, on the 31st day of January, 1900, by proclamation, adjourned the General Assembly, then in regular session in the city of Frankfort, to the town of London, in Laurel county, until February 6, 1900, and that consequently the action taken by the General Assembly in determining the contests, on the 2d day of February, 1900, was void.

Did the Governor possess the extraordinary power to adjourn the General Assembly on the 31st day of January, when its regular session was unfinished? The authority to adjourn is plead and relied upon in the answer for the purpose of avoiding the legal effect of the determination of the contest by the General Assembly. It has been, in like manner, urged as the only possible excuse for the flagrant act of the appellant in refusing to allow the General Assembly to convene in its halls, in the Capitol, and in dispersing it at the point of the bayonet.

By section 29 of the Constitution the General Assembly is invested with all the legislative power of the Commonwealth. As a sovereign body, it may, therefore, meet and adjourn when and where it will, unless there be some limitation upon its powers contained in the Constitution, or authority to control its adjournment is vested elsewhere.

By section 41 of the Constitution it is provided that—

> "Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which it may be sitting."

It will be observed that the only limitation here provided for is the concurrence of both Houses. With this concurrence the General Assembly may adjourn for more than three days —that is, indefinitely—and to some other place than that in which it may be sitting. The exercise of this power of adjournment may not be interfered with by the Governor. His consent to or approval of the resolution of adjournment is not necessary, for by section 89 of the Constitution resolutions of adjourment are not required to be approved by the Governor.

The only connection the executive has with the adjournment of the General Assembly is shown by section 80, which provides that—

> "In case of disagreement between the two Houses with respect to the *time of adjournment*, he may adjourn them to such time as he shall think proper, not exceeding four months."

This power is granted only in case of a "disagreement between the two Houses with respect to the *'time'* of adjournment," but not with respect to the *"place."* It, therefore, follows that even if the Governor, in case of a disagreement as to the time of adjournment, should exercise the power granted to him by section 80 of the Constitution, he could not adjourn the General Assembly to any *"other place"* than that in which it was sitting.

The only authority that the Governor has to change the place in which the General Assembly shall convene is contained in section 36 of the Constitution, where it is provided that "in case of war, insurrection or pestilence" it may, "by proclamation of the Governor, assemble for the time being, elsewhere." This manifestly refers to a time when the General Assembly is not in session, for the act of meeting elsewhere, if in session, would be an *adjournment* and not an *assembling*. When the General Assembly is not in session, this power is granted, in order that it may not be compelled to convene at the seat of government, in case of war, insurrection or pestilence; but when in session, the General Assembly, as a sovereign body, can take care of itself, and adjourn when and where it pleases to avoid war, insurrection and pestilence. If there be no disagreement between the two Houses with respect to the *time* of adjournment, the Governor has no power whatever to adjourn them.

In 1862, when Gen. Bragg invaded the State and the Confederates threatened the city of Frankfort, the Legislature was in session, and without proclamation or order from the Governor, adjourned to meet in Louisville. The provisions of the Constitution then in force upon this subject were the same as those in the present Constitution. This precedent is valuable, in that it shows the interpretation placed upon these sections of the Constitution by both the legislative and executive departments.

Section 41 of the Constitution was taken word for word from the Federal Constitution. In commenting on the section and the power of Congress and the President, Judge Story said:

"It is observable that the duration of each session of Congress (subject to the constitutional termination of their official agency) depends solely upon their own *will and pleasure*, with the single exception, as will be presently seen, of cases in which the two Houses *disagree, in respect of the time of adjournment.* In no other case is the President allowed to interfere with the time and extent of their deliberations. And thus their independence is effectually guarded against any encroachment on the part of the executive."

It is clear from these provisions of the Constitution that section 36 was only intended to provide a place for the General Assembly to meet in the event that it was found unsafe to assemble at the seat of government. As it could not control its movements until organized, it was necessary for some one to have power to designate a meeting place, in the event of war, insurrection or pestilence. This power was conferred on the Governor. It is clear that it was not intended for him to have the power to adjourn the General Assembly *after* it was organized (except in the case of disagreement between the Houses, as provided in section 80), for the reason that he might fix *one time and place* and the General Assembly, by virtue of section 41, might fix *another time and place.* This would not only create confusion, but destroy the independence of the legislative department of the government. For it is manifest that if the Governor can adjourn the General Assembly six days, in the midst of a regular session, he may adjourn it for an indefinite time. If he may adjourn it to London, in Laurel county, as soon as it shall assemble there, he may adjourn it to some other point, and thus fritter away the entire time of the session. Such a humiliating spectacle was never presented in an American Commonwealth as Kentucky witnessed, when the plaintiff in error attempted the adjournment of the General Assembly by a proclamation, read to it by his Adjutant-General, surrounded by bayonets!

These provisions of the Constitution, State and Federal, are for the protection of the legislative departments of the govern-

ment from the encroachments of the executive. The makers of these venerable instruments had in mind the fact that the English Kings exercised arbitrary power over the Parliament, and that the royal colonial Governors exercised like powers over the legislative assemblies held in the colonies; and hence it was set forth, in the Declaration of Independence, as one of our grievances, that legislative bodies had been called together "at places unusual, uncomfortable and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance;" and that the King had "dissolved representative Houses repeatedly, for opposing, with manly firmness, his invasions of the rights of the people."

With these abuses in mind, the framers of our Constitution were careful to provide for the independence of the legislative department of the government. It would be passing strange, if in State and Federal Constitutions, the executive was nevertheless allowed to retain the extraordinary powers which the Kings exercised through the colonial Governors, and of which our forefathers so stoutly complained!

The questions involved in these causes are of supreme importance, not only to the citizens of the Commonwealth of Kentucky, but to the people of every State in the Union. It is not simply a question whether the plaintiffs or the defendants in error shall discharge the duties of the offices involved, but the supremely important question is:

Shall the Constitution of the Commonwealth remain inviolate, and each department of the government, established thereby, continue to exercise its legitimate functions and powers? Does this chart of our liberty, formed at the birth of the Commonwealth by the wisdom of our forefathers, and amended since as experience has pointed out, contain the fatal gift of power to one department of the government by which it may strip another department of authority and nullify its action? In a word, does the exercise of its functions by the legislative department of our government depend upon the consent of the executive, or may its solemn act, done in discharge of unquestioned duty, be assailed by the judiciary on the ground of fraud? Can the judiciary question the motives

of the legislative department, and declare that because of an alleged political conspiracy it has corruptly discharged its duty, and thereupon adjudge its action null and void? Can the executive disperse the legislature at the point of the bayonet, while in the orderly discharge of its duties, and adjourn it to whatsoever point may suit his own corrupt purpose?

If these extraordinary powers are possessed by the judiciary and the executive, then it is a mistake to talk about the three departments of the government being each equally sovereign in the exercise of jurisdiction. If this power exists over the legislative department, the construction given to the Constitutions of the States and to the Federal Constitution itself must be revised; the people of Kentucky should understand that the law making power can only assemble, at any time or place, and remain in session by the will of the executive; that he can corruptly disperse it, if need be by force, and while its own motives may be questioned by the judiciary, it may not question, but must obey, the edict of the executive. The people of Kentucky should also understand that any act of the legislative department may be set aside by the judiciary, not alone because it conflicts with the Constitution, but because, in the opinion of the judiciary, the members of the Legislature were not actuated by proper motives; and we must further learn that while the motives of the members of the Legislature may be questioned, at any time, by the executive or judiciary, the Legislature can not question, in any event, the motives of judge or executive. If this contention is to prevail, then the legislative department, emasculated and shorn of its powers, is degraded from its position of co-ordinate sovereignty, and left only to register the will of judge or governor.

VI. THE PROCEEDINGS BEFORE THE GENERAL ASSEMBLY.

Counsel for plaintiffs in error assail the determination of the contest by the General Assembly as void, because, it is insisted, that it acted without evidence. The journals are silent

on this subject. "It must be presumed," said the Court of Appeals in its opinion in this case—

> "That the Legislature did its duty, and had before it such evidence as was satisfactory to it." (Vol. 1, p. 151, Tr.)

Judge Cooley says that where a Legislature acts, it must be assumed—

> "That *the legislative discretion has been properly exercised. If evidence is required, it must be supposed that it was before the Legislature when the act was passed;* and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding.
>
> "In those States where the enrolled bill is not held conclusive, it is uniformly held where the journals are merely silent that the *presumption is absolute that the required steps were taken.*" (Lafferty v. Huffman, 99 Ky., 88.)

The force of this authority is sought to be avoided by the statement that it only refers to the action of the Legislature in enacting laws. This is a mistake; but if true, it is clear that the principle is equally applicable here

Why is the action of the Legislature in enacting a law protected from attack? Simply because it is the act of an independent department of the government, in the discharge of its constitutional duty, and no other department has authority to question its action. The General Assembly on the 2d day of February, 1900, when it determined this contest, was in the discharge of a duty imposed upon it by the Constitution of the Commonwealth. Its good faith can not be questioned, nor can its act be assailed for lack of evidence. Its act in passing a law is of no higher dignity than in determining a contested election for Governor. It discharges a constitutionally imposed duty in each case, and its action is of the same dignity in the one case as in the other. The allegation—so much pressed upon the court—that the General Assembly acted

without any evidence, will not authorize the court to set aside its solemn adjudication. As for this allegation, it is sufficient to say, in the language of this court in the case of the United States v. The Des Moines Co., 124 U. S., 554, when discussing a similar pleading, that "*such allegations amount to nothing.*"

The action of the General Assembly is also assailed because the determination of the contest took place at a "secret session," as it is alleged, when certain members and plaintiffs in error were not notified. This objection is unavailing. The legislative record imports absolute verity, and its legal effect can not be destroyed by alleging want of notice of the time and place of the meeting.

In McCullogh v. State, 11 Ind., 425, it was alleged that certain members of the General Assembly were not present, and did not vote for a bill on its passage. The journal showed that they were present, and did vote. In Wise v. Bigger, 79 Va., 269, the allegation was that the bill did not receive the requisite number of votes to make it a law. The journal showed otherwise.

In both cases the courts held that the legislative record must prevail.

But are not the plaintiffs in error estopped to question the character of the meetings of the Houses of the General Assembly, at which this action was taken? The journals show that on the 31st day of January, 1900, the Senate and House of Representatives, were prevented, by an armed body of men, under the command of D. R. Collier, Adjutant-General, by order of William S. Taylor, Governor, from entering the halls, in the Capitol, in which their sessions were to be held; that they were prevented, by force, by the same body of armed men, from meeting at the Opera House and Courthouse, upon said day. These facts, alleged in the petition, are not denied in the answer. (Vol. 1, pp. 81, 85-6, Tr.)

This flagrant indignity, thus put upon the General Assembly of the Commonwealth, was a part of the effort of Taylor to adjourn it to London. His attempt to thus adjourn the General Assembly is now referred to in the brief of one of his

counsel as a *mistake*. If he deemed it wise and proper to adjourn the General Assembly to some other place in the Commonwealth, and, in good faith, supposed he had the power to do so, it would have been perfectly legitimate for him to have issued his proclamation, and thus announced the adjournment. Its legal effect could have been determined later.

In view of the solemn facts, shown by this record, it is remarkable that the plaintiffs in error should come before the courts as the self-appointed agents of the people, to protect them in the enjoyment of liberty and a republican form of government! What greater outrage upon liberty and a republican form of government is shown in the history of the English speaking people than this? The General Assembly, by order of the Governor, barred by bayonets from assembling, during a regular session, for the orderly discharge of their duties!

The 19th day of February, 1900, was the first day the General Assembly was permitted to convene in the Capitol, at Frankfort. On that day a resolution was adopted by the Senate, which recited the fact that William S. Taylor, on the 31st day of January, 1900—

> "By the use of armed force, dispersed the General Assembly, and has, until recently, prevented the Senate and House from assembling at their regular rooms and places of meeting; and, whereas, the General Assembly and each House thereof, after *public notice*, met in joint and separate sessions in the city of Frankfort, a full quorum of such bodies being present, and adopted the majority reports and resolutions of the Boards of Contest for Governor and Lieutenant-Governor of the Commonwealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant-Governor, and seating the contestants, William Goebel and J. C. W. Beckham, as Governor and Lieutenant-Governor, respectively, all of which proceedings, reports and resolutions are set out in the journals of the two Houses of the General Assembly; and,
>
> "Whereas, this joint assembly is now enabled to meet

in its regular place of meeting, and whilst it adheres to the belief, beyond doubt, that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, to remove any doubt that may exist in the minds of any of the people of the Commonwealth; etc."

This recital is followed by a resolution ratifying the action of the General Assembly in determining the contest for Governor and Lieutenant-Governor.

On the 20th day of February this resolution was adopted in the House, and also by both Houses in joint session, and the resolution entered, at large, on the journals. These facts are alleged in the petition and not denied in the answer. (Vol. 1, pp. 7-8, Tr.)

The death of William Goebel did not abate the contest proceeding. By the Constitution of Kentucky (section 84) the right to discharge the duties of the office of Governor, in case of death, devolved upon the Lieutenant-Governor; J. C. W. Beckham, claiming to have been elected such Lieutenant-Governor, had an interest, and consequently a right, to prosecute the contest. But *the people* had a higher interest in the contest; this interest survived the death of the contestant, Goebel. Consequently the General Assembly had the power to adopt the resolution of ratification, and cure any omissions in their previous action. The meetings at which this was done were not secret.

Another ground of objection to the legislative determination of the contest is that the evidence did not authorize the finding. Of this, however, the General Assembly was the *exclusive judge*. This court has no jurisdiction to review the finding and weigh the evidence.

It may not be improper, however, to say that after an exhaustive analysis of the evidence, counsel arrives at the conclusion that there was *some* evidence of military intimidation and of tissue ballots. The record shows that many of these ballots, from five or six counties, were exhibited before the board *in evidence*. *They are not in the record now*. As to

this evidence, which was presented before the General Assembly, the court can not judge, if it would.

With desperate inconsistency the counsel for plaintiffs in error insist that the General Assembly had no power to determine the contest in the absence of the evidence, and at the same time it is insisted that this court should determine that there was *no evidence of tissue ballots* at all, when the record shows that very many of the *original ballots* were put in evidence on the trial of the contest!

It is zealously urged by counsel for plaintiffs in error that the General Assembly did not have the power to declare the contestants elected Governor and Lieutenant-Governor, but that if it had been established that there was military intimidation, in the county of Jefferson, and that tissue ballots were used in the counties named in the notice of contest, this would have rendered the election void in the entire State. But that is not the law of Kentucky.

It is provided in subsection 8 of section 1531, Kentucky Statutes, (which treats of contested elections for Governor and Lieutenant-Governor, and the powers and duties of the Board of Contest), that in the event that it is found (1st) that the candidates receiving the highest number of votes given, have received an equal number of votes, the right to the office shall be determined by lot; (2d) where the person returned is found not to have been legally qualified to receive the office, at the time of his election, a new election shall be ordered; but (3d) "where another than the person returned shall be found to have received the *highest number of legal votes* given, such other shall be adjudged to be the person elected and entitled to the office."

Section 1462, Kentucky Statutes, requires that—

> "All ballots shall be printed on plain white paper, sufficiently thick that the printing can not be distinguished from the back."

This provision, enacted in pursuance of section 147, Constitution of Kentucky, has been held mandatory, and the use of

ballots which are not thick enough to preserve the secrecy of the vote avoids the election in the district or county where used. (Nall v. Tinsley, 21 Ky. Law Rep., 1167.)

The counties which used these illegal ballots were easily identified by the evidence, accompanied, as it was, in many instances by the original ballots. In such a state of case it was the duty of the Board, and of the General Assembly, to throw out the votes of the counties using the illegal ballots. The election was not thereby rendered invalid in the entire State. (Woolley v. Louisville South. R. R. Co., 93 Ky., 223.)

The same rule applies where military intimidation is shown.

It is respectfully submitted that the motion to dismiss the writ should be sustained, because no color of a Federal question is presented by the record; and that, in any event, the judgment of the Court of Appeals of Kentucky should be affirmed.

After all has been said, the attempt here is to induce this court to review the action of the General Assembly in passing upon this contest. It is respectfully submitted that the courts have no more authority to do this than the Congress of the United States would have to interfere in a case which this court had decided. Injustice may sometimes result from this limitation upon the power of the judiciary, but if our form of government is to be maintained, one department must not invade the jurisdiction of another. In closing, the attention of the court is called to the words of the Supreme Court of Indiana in Evans v. Brown, 30 Ind., 514:

> "Public authority and political power must, of necessity, be confided to officers, who, being human, may violate the trust reposed in them. This, perhaps, can not be avoided absolutely, but it applies also to all human agencies. It is not fit that the judiciary should claim for itself a purity beyond others; nor has it been able, at all times, with truth, to say that its high places have not been disgraced. The framers of our government have not constituted it with faculties to supervise co-ordinate departments, and correct or prevent abuses of their author-

ity. It can not authenticate a statute; that power does not belong to it; nor can it keep the legislative journal. It is neither just nor modest for judges to impeach the integrity of another department of government, and to claim that the judiciary only will be faithful to its obligation."

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TAYLOR AND MARSHALL *v.* BECKHAM (NO. 1).

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 603. Argued April 30, May 1, 1900. — Decided May 21, 1900.

By the constitution and laws of Kentucky, the determination of contests of the election of Governor and Lieutenant Governor is, and for a hundred years has been, committed to the General Assembly of that Commonwealth.

The Court of Appeals of Kentucky decided that the courts had no power to go behind the determination of the General Assembly in such a contest, duly recorded in the journals thereof; that the office of Governor or of Lieutenant Governor was not property in itself; and, moreover, that, under the constitution and laws of Kentucky, such determination being an authorized mode of ascertaining the result of an election for Governor and Lieutenant Governor, the persons declared elected to those offices on the face of the returns by the Board of Canvassers, only provisionally occupied them because subject to the final determination of the General Assembly on contests duly initiated. *Held:*

(1) That the judgment of the Court of Appeals to the effect that it was not empowered to revise the determination by the General Assembly adverse to plaintiffs in error in the matter of election to these offices was not a decision against a title, right, privilege or immunity secured by the Constitution of the United States; and plaintiffs in error could not invoke jurisdiction because of deprivation, under the circumstances, of property or vested rights, without due process of law;

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(2) That the guarantee by the Federal Constitution to each of the States of a republican form of government was intrusted for its enforcement to the political department, and could not be availed of, in connection with the Fourteenth Amendment, to give this court jurisdiction to revise the judgment of the highest court of the State that it could not review the determination of a contested election of Governor and Lieutenant Governor by the tribunal to which that determination was exclusively committed by the state constitution and laws, on the ground of deprivation of rights secured by the Constitution of the United States.

THIS was an action in the nature of *quo warranto* brought, under the statutes of Kentucky, by J. C. W. Beckham against William S. Taylor and John Marshall, for usurpation of the offices of Governor and Lieutenant Governor of Kentucky, in the Circuit Court of Jefferson County, in that Commonwealth.

The petition averred that at a general election held on the 7th of November, 1899, in the Commonwealth of Kentucky, William Goebel was the Democratic candidate for Governor and J. C. W. Beckham was the Democratic candidate for Lieutenant Governor, and that at said election William S. Taylor and John Marshall were the Republican candidates for the said offices respectively; that after said election the State Board of Election Commissioners, whose duty it was to canvass the returns thereof, canvassed the same, and determined on the face of the returns that said Taylor and said Marshall were elected Governor and Lieutenant Governor, respectively, for the term commencing December 12, 1899, and accordingly awarded them certificates to that effect, whereupon they were inducted into those offices.

The petition further alleged that within the time allowed by law said William Goebel and J. C. W. Beckham gave written notices to Taylor and Marshall that they would each contest the said election on numerous grounds set out at large in the respective notices; that said notices of contest were duly served on said Taylor and Marshall, filed before each house of the General Assembly, and entered at large on the journals thereof; that thereafter Boards of Contests were duly selected by each House of the General Assembly, and sworn to try said contests as required by law; that at the time appointed for

the hearing the said Taylor and Marshall appeared, and each filed defences and counter notices, and the evidence of contestants and contestees was heard by the Boards from January 15, 1900, until January 29, 1900, inclusive, and upon January 30, 1900, said contests were submitted without argument to the Boards for decision.

That thereafter the Boards, having considered the matters of law and fact involved in the contests, did each separately decide the contest submitted to it, and made out in writing its decision and reported the same to each House of the General Assembly for action thereon.

That in the contest for Governor the Board determined, and so reported to each House of the General Assembly, that William Goebel had received the highest number of legal votes cast for Governor at the election held on November 7, 1899, and that he was duly elected Governor for the term beginning December 12, 1899; and that in the contest for Lieutenant Governor the Board determined and so reported that the contestant Beckham had received the highest number of legal votes cast at said election, and was duly elected to the office of Lieutenant Governor for said term.

The petition also alleged that the reports and decisions of the Contest Boards were thereafter duly adopted and approved by both Houses of the General Assembly in separate and in joint sessions; that there were present in the House of Representatives at said time 56 members and in the Senate 19 members, which was a quorum of each House, and that there were present 75 members in joint session, and that the General Assembly did then and there decide and declare that William Goebel and J. C. W. Beckham had each received the highest number of legal votes cast at said election for the offices of, and were duly elected, Governor and Lieutenant Governor as aforesaid. The Journals of both Houses of the General Assembly, showing the proceedings and facts aforesaid, were referred to and made part of the petition, and attested copies thereof filed therewith.

It was further averred that after the determination of said contest by the General Assembly, the said William Goebel and

J. C. W. Beckham were duly sworn and inducted into the offices of Governor and Lieutenant Governor of the Commonwealth and at once entered upon the discharge of their respective duties. That thereafter, on the third of February, 1900, William Goebel died, and by law said Beckham was required to discharge the duties of the office of Governor, and accordingly on that day he took the oath prescribed by law, and immediately entered on the discharge of the duties of said office.

It was further alleged that the powers of Taylor as Governor and of Marshall as Lieutenant Governor immediately ceased on the determination of the contest by the General Assembly, but that notwithstanding the premises the said Taylor and Marshall had usurped the said offices of Governor and Lieutenant Governor, and refused to surrender the records, archives, journals and papers pertaining to the office of Governor, and the possession of the executive offices in the Capitol in the city of Frankfort.

The prayer of the petition was "that the defendant, William S. Taylor, be adjudged to have usurped the office of Governor of this Commonwealth, and that he be deprived thereof by the judgment of this court; that this plaintiff be adjudged entitled to the said office and be placed in full possession of said office of Governor, the executive offices provided by the Commonwealth for the use of the Governor, and that all the records, archives, books, papers, journals and all other things pertaining to the said office be surrendered and delivered to this plaintiff, by the said Taylor, and that the said Taylor be enjoined and restrained from further exercising or attempting to exercise the office of Governor of this Commonwealth; that the said John Marshall be adjudged to have usurped the office of Lieutenant Governor of the Commonwealth, and that he be deprived thereof, and declared not entitled to the same by the judgment of this court, and enjoined from assuming to act as such Lieutenant Governor; that plaintiff, Beckham, be adjudged the lawful incumbent of said office; and finally the plaintiff prays for his costs in this behalf expended, and for all proper relief."

Defendants Taylor and Marshall filed answers and amended

answers and counterclaims, denying any valid proceedings in contest, and alleging in substance that the action of the Boards of Contests and of the General Assembly in the contests was the result of a conspiracy entered into by the members of the Boards and the members of the General Assembly to wrongfully and unlawfully deprive contestees of their offices; that in the execution of this design the members of said Boards were fraudulently selected, and not fairly drawn by lot, as required by law, and that a majority of those selected were persons whose political beliefs and feelings, inclinations and desires on the subject of the contests were known in advance. That the entries on the Journals of the General Assembly were false and fraudulent, and made in pursuance of said conspiracy, and that the pretended decisions were fraudulent and utterly void. That the Senate lacked a quorum at the time of the pretended adoption of the Contest Boards' reports; and that defendant, Taylor, as Governor, on January 31, 1900, refused to permit the members of the General Assembly to meet as the General Assembly at Frankfort, because he had previously adjourned the General Assembly to meet on February 6 at London, in Laurel County.

The notices of contest were averred to have been exactly alike, *mutatis mutandis*, and the notice in respect of the office of Governor was set out as given in the margin.[1]

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[1] "The Contestee, William S. Taylor, is hereby notified that the Contestant, William Goebel, who was more than thirty years of age, and has been a citizen and resident of Kentucky for more than six years, next preceding the 7th day of November, 1899, will contest the election of the said William S. Taylor to the office of Governor of this Commonwealth, before the next General Assembly thereof, to be convened as provided by law, in the city of Frankfort, on the 2d day of January, 1900, and before the Board of Contest to be organized by the said General Assembly for the purpose of determining the contest for Governor; and will then and there contest the right of the said William S. Taylor to the office of Governor of this Commonwealth by virtue of the election held therein on the 7th day of November, 1899, and the certificate of election granted unto the said William S. Taylor by the State Board of Election Commissioners on the 9th day of December, 1899; and will ask the General Assembly and said Board of Contest to determine that the Contestant, William Goebel, was legally and rightfully elected Governor aforesaid, at the said election, and that Wil-

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The following are paragraphs from the answers and amended answers:

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liam S. Taylor was not rightfully or legally elected to said office; and said Contestant will then and there ask the said Board of Contest and the General Assembly to take such proceedings and orders in the matters of said contest as is required by law for his induction into said office.

For grounds of such contest, the Contestant says.

First. In the election held in this Commonwealth on the 7th day of November, 1889, for the office of Governor, the Contestant, William Goebel, was the Democratic candidate, and the Contestee, William S. Taylor, was the Republican candidate for said office of Governor, and were then and there voted for as such candidates; and at said election held in the counties of Knox, Jackson, Magoffin, Pike, Martin, Johnson, Owsley, Lewis, Carter, Pulaski, Bell, Clinton, Russell, Adair, Harlan, Casey, Wayne, Whitley, Todd, Caldwell, Crittendon, Perry, Muhlenburg, Monroe, Metcalf, Butler, Letcher, Leslie, Lee, Laurel, Hart, Greenup, Grayson, Estill, Edmonson, Cumberland, Clay, Breckenridge, Boyd and Allen, and in each precinct thereof, all of the official ballots used, in all of said counties, were printed upon paper so thin and transparent that the printing and the stencil marks thereon, made by the voters, could be distinguished from the back of said ballots; that none of the said ballots used in said counties, were printed upon plain white paper, sufficiently thick to prevent the printing from being distinguished from the back of the said ballots, whereby the secrecy of the said ballots were destroyed, and the said election in all of the said counties rendered void, and the printed vote thereon should not be counted in ascertaining the result of the election in this Commonwealth.

Second. That the said alleged election held in the County of Jefferson and the City of Louisville on the 7th day of November, 1889, was and is void, because the Contestant says that upon that day before the said election, the Governor of the Commonwealth unlawfully called the military forces of the State into active service in said City, armed with rifles, bayonets and gatling guns, for the purposes of overawing, intimidating and keeping Democratic voters from the polls thereof, and did himself, in violation of the law of the land, go to the said City and County the day before said election and assume direction and command of the said military forces and ordered and directed them to go, and they did go, in obedience to said order, to the polling places in said city, on the said day of said election, and thereby many thousand of voters, to wit, more than enough to have changed the result of the said election, were intimidated and alarmed, and failed and refused to go to the polls or to vote on said day; that for this cause the said election in the City of Louisville and County of Jefferson, was not free and equal, but is void, and the said alleged votes cast thereat should not be counted.

Third. The Contestant says that on the day of the said election in the city of Louisville, and County of Jefferson, Sterling B. Toney, one of the

"Further answering herein defendants, W. S. Taylor and John Marshall, say, each of them is over forty years of age,

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circuit judges of the County and City aforesaid, without authority of law, issued a mandatory injunction, by which he required the legally appointed officers of the election for the City and County aforesaid, to admit in to the polling places during said election many persons who were not authorized or required by law to be in said polling places, and take part in said election and the pretended count of ballots, and were kept and maintained in the said places unlawfully and wrongfully by the said officers of said Judge and the military power of the State, under the direct command of the Governor, by reason of which the votes cast at said election were not fairly counted, but the result left in doubt and uncertainty, and for this cause the said election was void and the alleged and pretended votes cast thereat in said city should not be counted.

Fourth. The said Contestant says that at the said election, held as aforesaid, on the 7th day of November, 1899, in the County of Jefferson and City of Louisville, and Warren, Hopkins, Christian, Knox, Whitley, Pulaski, Bell and divers other counties of this Commonwealth, that many thousands of the legal voters thereof, to wit, more than enough thereof to have changed the result of said election, who were in the employment of the Louisville and Nashville Railroad Company and other corporations, were intimidated by the officers and superior employés of said company and corporations by threats of less employment and discharge from the service of the said company and corporations, and were thereby forced and compelled to vote and did, for this cause, vote for the Contestee for the office of Governor, when in truth and in fact they desired to vote for the Contestant, and would have done so but for such intimidation and duress. For this cause the said election held in said counties was and is void.

Fifth. The Contestant says that before the said election on November 7, 1899, the leaders of the Republican party in the Commonwealth corruptly and fraudulently entered into an agreement and conspiracy with the said officers of the Louisville and Nashville Railroad Company and the American Book Company and other corporations and trusts, by which the said companies, corporations and trusts agreed to furnish large sums of money to be used in defeating the Contestant at said election by bribing and corrupting the voters and election officers of this Commonwealth and debauching the public press thereof; and that in pursuance to the said conspiracy the said companies, corporations and trusts did furnish large sums of money, which were so corruptly and unlawfully used in the counties of Jefferson, Warren, Fayette, Breathitt, Hopkins, Daviess, Logan, Todd, Henderson, Pulaski, Whitley, Knox, Bell, Hardin and divers other counties of the Commonwealth, and by which many thousands of the legal voters thereof were bribed and corrupted, and thereby caused to vote for Contestee. Newspapers were purchased and debauched and officers of said election bribed, and the Contestant deprived of many thousand votes which he would have

has been a citizen and resident of the State of Kentucky all his life, and likewise a citizen and resident of the United States all his life. They say further that, as hereinafter more specifically

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received but for the unlawful and corrupt conspiracy aforesaid, which votes were sufficient to have elected him.

Sixth. The Contestant further says that in the counties of Knox and Lewis, the County Board of Election Officers, whose duty it was, by law, to correctly certify the result of the election held in their respective counties, were compelled by unlawful mandatory injunctions issued by circuit judges and clerks, to sign false returns and certificates of said election, giving to the Contestee large majorities of the votes cast in said counties; and in the county of Knox, the said board was compelled by duress and open threats of violence from a large body of armed citizens of said county, assembled at the county seat, to sign false and fraudulent certificates. In the county of Jefferson, the officers who held said election at the voting places in the city of Louisville, were compelled to sign like false and fraudulent certificates of said election, by duress, and under threats of Sterling B. Toney, one of the circuit judges of the Commonwealth, who announced his purpose to fine and imprison said officers if they did not sign said false certificates. By reason of the duress aforesaid, and the said unlawful mandatory injunctions, the votes in the said counties and all the precincts thereof, were not correctly counted or certified, and the said votes so certified should not now be counted in determining the result of said election. All of said certificates were signed and made under duress, and would not have been signed but for the facts aforesaid.

Seventh. The Contestant says that in pursuance to a conspiracy of the leaders of the Republican party in Kentucky, and the United States Marshal for the District of Kentucky, to intimidate and deter the Democrats and friends of Contestant from voting for him, said Marshall and other officers and persons threatened to indict many of Contestant's supporters in the United States Court for the District of Kentucky for alleged violation of law in connection with said election, and, in pursuance to said conspiracy, caused their threats to be published in the daily press of the State, and in other forms, and upon the day of said election caused Deputy United States marshals to be and remain at the polling places in the city of Louisville, and in various other cities of the Commonwealth, intermeddling with the said election, overawing, threatening and intimidating Democratic voters and their friends and supporters of the Contestant, whereby many voters, to wit, more than enough to have changed the result of said election, were prevented from voting for Contestant, who otherwise would have done so.

Eighth. The Contestant says that after said election and before the meeting of the State Board of Election Commissioners, in the city of Frankfort, a conspiracy was formed and entered into by the Contestee, the Louisville and Nashville Railroad Company, John Whallen, who was its paid agent, and other persons whose names are unknown to Contestant, to bring from

stated the said Taylor was, on November 7, 1899, duly elected Governor of the State of Kentucky, and the said Marshall duly elected Lieutenant Governor for the State of Kentucky by the qualified voters thereof; that each of them afterwards received

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various sections of this Commonwealth large numbers of desperate armed men, for the purpose of alarming and intimidating the members of the said Election Board in the discharge of their duties, and the friends and supporters of said Contestant; and that in pursuance to said conspiracy the corporations and persons aforesaid, did transport to the City of Frankfort at said time, a large number of the militia of the State, dressed in citizens' clothing, and many hundreds of desperate armed men, and unlawfully kept and maintained said militia and armed men in and about the chamber and Capitol where said Election Board held its sessions for several days; for the unlawful purpose of alarming and intimidating the members of said Board and the good citizens of the Commonwealth; and the said corporation and persons also caused the military forces of the Commonwealth to be armed and equipped and held in readiness and the state arsenal to be guarded by armed men for the unlawful purpose aforesaid, and Democratic members of the military companies of the state militia to be disarmed and discharged and their places to be filled with Republicans.

Ninth. The Contestant for further grounds of contest herein says that, in the County of Jefferson, the County Board of Election officers, whose duty it was to ascertain and correctly certify the result of said election held in said County, were compelled by threats of violence and death to the two Democratic members of said Board to accept, and said Board by reason of the duress aforesaid, did accept, false, fraudulent and illegal returns from the various precincts in the City of Louisville, which returns were prepared by the attorneys and agents of the Republican party and were signed by the precinct officers aforesaid under duress and threats of fine and imprisonment, and said Board of Election officers, by reason of the duress aforesaid, based upon their certificate as to the result of said election in said county upon the said false, fraudulent and illegal returns made by the said precinct officers as aforesaid, and for this cause the Contestant was deprived of many thousand votes cast for him at said election and the Contestee was given many thousand illegal votes to which he was not entitled, to wit, more than enough to have changed the result of the said election, and for this cause the said election was and is void and the alleged vote of Jefferson County as certified by said County Board should not be counted in ascertaining the result of said election in this Commonwealth.

Tenth. The Contestant further avers that many thousand of persons, who were not entitled to vote at the said election, on November 7, 1899, were unlawfully brought into this Commonwealth by the agents of the Louisville and Nashville Railroad Company and others acting in Contestee's behalf, and at said election were wrongfully and unlawfully voted for the

in due form a certificate to that effect from the State Board of Election Commissioners of the Commonwealth of Kentucky, and each of them thereafter duly qualified as such officers by taking the oath of office prescribed by law therefor, and thereby each of them became charged with an express public trust for the benefit of the people of the State of Kentucky. They say that the proceedings referred to in the petition herein by which it is alleged that the contests over the offices of Governor and Lieutenant Governor were tried and determined, and by which it is alleged that the authority of these defendants to act respectively as Governor and Lieutenant Governor was terminated, were and are utterly void, and of no effect for the reasons hereinafter stated, and if effect be given to them, and these defendants be thereby deprived of their respective offices of Governor and Lieutenant Governor of Kentucky, and plaintiff, Beckham, be thereby installed in the office of Governor or Lieutenant Governor of Kentucky, these defendants will be thereby deprived by the State of Kentucky of their property without due process of law and both they and the people of Kentucky, and the qualified voters thereof will be deprived of their liberty without due process of law, and will be denied the benefit of a republican form of government, all of which is contrary to the provisions of the fourth section of the fourth article of the said Constitution and to the Fourteenth Amendment to said Constitution, the benefits of which provisions are hereby specially set up and claimed by these defendants both for themselves and for the people of Kentucky, and the qualified voters thereof, whose representatives and trustees these defendants are."

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"Defendants further say that, if the State, after having furnished to its citizens and electors in a number of its counties official ballots upon which it required them to vote, or not vote

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Contestee in said election; that the number of votes so cast were sufficient to have changed the result of said election.

The Contestant will, upon the grounds aforesaid, at the time and place and before the tribunals stated, contest the election of said William S. Taylor to the office of Governor of this Commonwealth."

at all, in the election of a Governor and Lieutenant Governor, shall reject their votes, and thus refuse to allow used them to participate in the election of such officers, merely because they in voting the ballots which the State required them to use, and if the State shall, thereby and on that account, refuse to allow the persons respectively chosen for the office of Governor and Lieutenant Governor by the majority of the qualified voters of the State, including those using the ballots aforesaid, to take their seats and perform the duties of Governor and Lieutenant Governor, and shall in lieu of them seat other persons, then the State will thereby deprive the said citizens and electors, all of whom are both citizens of Kentucky and citizens of the United States, of their political liberty without due process of law, in violation of the Constitution of the United States, and will thereby deny to them the benefits of a republican form of government in violation of the Constitution of the United States; and will thereby also deprive these defendants of their property without due process of law, all of which is contrary to the provisions of the Constitution of the United States."

* * * * * * * *

"And defendants further say that if any such pretended meeting of members of the General Assembly was held either on January 31 or February 2, at which any action was taken or attempted to be taken on the reports of said Contest Committees, the said meetings were held secretly, without any notice to any of the Republican members of the General Assembly and without any notice to either of these defendants that such meetings were to be held, and without any opportunity either to the said Republican members or any of them to be present, or any opportunity for either of these defendants to be present at such meetings at which the said contests were to be heard and determined. And if any such meetings were held or attempted to be held on either of those days, and any determination of either of said contests was pretended to have been had, it was utterly void on account of lack of notice, and opportunity to be present or to be heard as just herein stated, as well as for the other reasons heretofore given. And to deprive these defendants or either of them of their offices by such action would

be to deprive them of their property without due process of law, and would be to deprive defendants and the other people of the State of Kentucky, and especially the qualified voters thereof, of their political liberty without due process of law, and to deny to them the benefits of a republican form of government. All of which is contrary to the provisions and guaranties of the Constitution of the United States as well as that of Kentucky."

* * * * * * * *

"Defendants further say that both the offices of Governor and Lieutenant Governor are offices created by the constitution of Kentucky, and, therefore, not subject to abolition by the General Assembly of Kentucky. And, furthermore, it is provided by the constitution of Kentucky, that 'the salaries of public officers shall not be changed during the term for which they were elected,' and defendants say they were elected as heretofore shown to the offices of Governor and Lieutenant Governor, respectively, of the State of Kentucky on November 7, 1899, for a period of four years each, and then and thereby became entitled to exercise the functions of said offices and to receive the salaries and emoluments appertaining thereto, which are large and valuable, and were such when they were thus elected; the salary of the Governor being then and now fixed by law at $6500 per annum; and to take from them their said offices and their said salaries and emoluments by the aforesaid action of said contest tribunals would be to deprive them of their property without due process of law, contrary to the provisions of the Constitution of the United States, and especially of the Fourteenth Amendment thereof."

* * * * * * * *

"Defendants say that the power vested in the Houses of the General Assembly of Kentucky to try contests over elections of Governor or Lieutenant Governor is judicial in its nature, and is subject to the same limitations and restrictions to which the exercise of judicial power is ordinarily subject; that by the constitution of the State of Kentucky and also by the Constitution of the United States, especially the Fifth and Fourteenth Amendments thereof, the exercise of absolute and arbitrary

power by the State or any department thereof, whereby any person shall be deprived of life, liberty, property or the pursuit of happiness, including therein the enjoyment of honors and the occupation of positions of public trust and emolument, is forbidden. But defendants say that if effect be given to the alleged decisions by the said Boards of Contest or the said Houses of the General Assembly as to the said contested elections for Governor or Lieutenant Governor; and these defendants be thereby deprived of the offices of Governor or Lieutenant Governor, and the plaintiff Beckham be thereby vested with the power of Governor of Kentucky, then not only will the people of Kentucky be deprived of their political liberty without due process of law, but these defendants will also be deprived without due process of law of the right to hold the said offices of Governor and Lieutenant Governor, which are both profitable and honorable, all of which is contrary to and forbidden by both the provisions of the state constitution and of the Constitution of the United States above referred to, and defendants say that if by a proper construction of the constitution of Kentucky the absolute and arbitrary power is given either to the Boards of Contest or the Houses of the General Assembly to take from these defendants the offices of honor, trust and emolument to which they were elected by the people of the State as heretofore alleged, under the false guise of a trial of a contest over said offices, then the said Constitution of the State is itself contrary to the aforesaid provisions of the Constitution of the United States."

The prayer of the defendants was that the bill be dismissed; that J. C. W. Beckham be adjudged a usurper, and that William S. Taylor and John Marshall be, respectively, adjudged the Governor and Lieutenant Governor of the Commonwealth.

The answers were in large part disposed of on demurrer and motion to strike out, and the case was submitted to the Circuit Court for determination on the law and facts without the intervention of a jury, and defendants "moved the court to state in writing the conclusions of fact found separately from the conclusions of law;" but it was agreed that the court might adopt its opinion on demurrer as its statement of its conclusions

of law. This the court did, and found the facts in its judgment, which findings included, among others, these:

"Second. William Goebel and J. C. W. Beckham inaugurated a contest for the offices of Governor and Lieutenant Governor respectively before the General Assembly of Kentucky on the second day of January, 1900, against William S. Taylor and John Marshall, and the said contest was finally determined by the General Assembly on the second day of February, 1900, at which time it was adjudged and determined by each House of said General Assembly, acting separately and also in joint session, that the said William Goebel was duly elected Governor of the Commonwealth of Kentucky for the term beginning December 13, 1899, and was entitled to said office of Governor, and it was then and there in like manner determined by said General Assembly and by each House acting separately and in joint session that the said J. C. W. Beckham was duly elected Lieutenant Governor of said Commonwealth for the same term.

"Third. Immediately after the said determination the oath of office of Governor as provided by law was administered to said Goebel, February 2, 1900, and the oath of office as Lieutenant Governor, as provided by law, was in like manner administered to J. C. W. Beckham.

"Fourth. Said William Goebel died on the third day of February, at 6:45 P.M., and shortly thereafter upon said day J. C. W. Beckham as Lieutenant Governor was sworn, as required by law, to discharge the duties of the office of Governor of the Commonwealth."

Judgment of ouster was rendered in favor of plaintiff and against defendants.

The case was then carried on appeal to the Court of Appeals of Kentucky and the judgment affirmed, 56 S. W. Rep. 177, whereupon a writ of error from this court was allowed by the Chief Justice of that court.

The Journals of the two Houses, attached to the petition as part thereof, showed that the General Assembly convened on January 2, 1900, and that on the third day after its organization Boards of Contest were appointed pursuant to the statute; that on February 2, 1900, the Board in each of the contests re-

ported to the two Houses that they had heard all the evidence offered by the parties, and that William Goebel had received the highest number of legal votes cast for Governor; that J. C. W. Beckham had received the highest number of legal votes cast for Lieutenant Governor; and that they were duly elected and entitled to those offices. The Journals further showed that on the same day both Houses, with a quorum present, approved and adopted, separately, and in joint session, the reports of the Contest Boards, and declared that William Goebel and J. C. W. Beckham were duly elected Governor and Lieutenant Governor respectively.

It appeared that thereupon said Goebel and Beckham on that day, February 2, took the oath of office; that on January 30 William Goebel was shot by an assassin, receiving a wound from which he afterward died on February 3; and that on January 31 defendant Taylor as Governor issued a proclamation, declaring that a state of insurrection existed at Frankfort, Kentucky, adjourning the General Assembly until February 6, and ordering it then to assemble at the town of London, in Laurel County.

The sessions of the General Assembly on February 2 were not held at the State House, for the reason, as recited in the journals, that it was occupied by a military force, which would not allow the General Assembly to meet there, and thereupon the General Assembly met on that day in the Capitol Hotel in the city of Frankfort. On February 19 the General Assembly met at the State House, and the Senate on that day adopted the following resolution:

"Whereas, on the 31st day of January, 1900, the acting Governor of the Commonwealth of Kentucky, by the use of armed force, dispersed the General Assembly, and has until recently prevented the Senate and House from assembling at their regular rooms and places of meeting; and,

"Whereas, the General Assembly and each House thereof, after public notice, met in joint and separate sessions in the city of Frankfort, a full quorum of such bodies being present, and adopted the majority reports and resolutions of the Boards of Contest for Governor and Lieutenant Governor of the Common-

wealth of Kentucky, unseating the contestees, W. S. Taylor and John Marshall, as Governor and Lieutenant Governor, and seating the contestants, William Goebel and J. C. W. Beckham, as Governor and Lieutenant Governor, respectively, all of which proceedings, reports and resolutions are set out in the Journals of the two Houses of the General Assembly; and,

"Whereas, this joint assembly is now enabled to meet in its regular place of meeting, and, whilst it adheres to the belief beyond doubt that the action of the General Assembly heretofore taken in reference to said contests is valid, final and conclusive, to remove any doubt that may exist in the minds of any of the people of the Commonwealth; now, be it

"*Resolved*, By the General Assembly of the Commonwealth of Kentucky, in joint session assembled, to the end that all doubt may be removed, if any exists, as to the validity and regularity of the action and proceedings at the times and places shown by the Journals of the two Houses, other than its regular rooms, provided by law, that all the acts, proceedings and resolutions of the Senate and House and of the joint assembly of the two Houses upon or touching the report of the majority of the Boards of Contest for the offices of Governor and Lieutenant Governor, unseating the contestees and seating William Goebel and J. C. W. Beckham, and declaring them to have been elected Governor and Lieutenant Governor, respectively, on the 7th day of November, 1899, is hereby reënacted, readopted and reaffirmed and ratified at this, the regular place of meeting provided by law, at the seat of government in Frankfort, Ky."

The same resolution was adopted by the House, and on February 20 by both Houses in joint session.

The Court of Appeals regarded the disposal of the following contentions of Taylor and Marshall as decisive of the case, namely: (1.) That the proceedings of the Legislature of February 2 were void, because the Legislature had then been adjourned by the Governor until February 6, and no legal session could be held in the meantime. (2.) That William Goebel having died on February 3, the contest for the office of Governor thereby abated, and the action of the Legislature on February 19 and 20 was therefore void. (3.) That the Legislature

took no action on February 2, and that the Journals of these meetings were fraudulently made by the clerk in pursuance of an alleged conspiracy between certain members of the Assembly and contestants. (4.) That the General Assembly acted without evidence and arbitrarily.

The Court of Appeals held that the Governor had no power to adjourn the Legislature, and that his attempt to do so was wholly void, and did not interfere with the right of the Legislature to proceed with its sessions at Frankfort. The only authority relied on to sustain his action was section 36 of the constitution of Kentucky, as follows: "The first General Assembly, the members of which shall be elected under this constitution, shall meet on the first Tuesday after the first Monday in January, eighteen hundred and ninety-four, and thereafter the General Assembly shall meet on the same day every second year, and its sessions shall be held at the seat of government, except in case of war, insurrection or pestilence, when it may, by proclamation of the Governor, assemble, for the time being, elsewhere."

This the court held did not provide for the adjournment of the General Assembly by the Governor after it had assembled, but for the designation of another place at which it might assemble for the time being and organize, when prevented by the causes named from doing so at the capital; and that it was not intended to authorize such action as was taken was clear from section 80, which provided among other things: "In case of disagreement between the two Houses with respect to the time of adjournment, he (the Governor) may adjourn them to such time as he may think proper, not exceeding four months." This showed that the Governor had no power over the time of adjournment of the two Houses, except in cases of disagreement as to that matter between them, and no such disagreement existed here. And even then it did not confer upon him power to name any other place than that in which the legislature might be sitting.

Section 41 also provided: "Neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place

than that in which it may be sitting." By this section either House might, with the consent of the other, adjourn for more than three days, or to any other place than that in which it was sitting; but it could not have been intended that the Governor should have like power. On the contrary, the powers of the state government were divided into three distinct and independent departments, and the State constitution was intended to maintain the absolute independence of each.

The court further decided that the death of William Goebel on February third did not affect the right of Beckham. If Goebel was elected Governor, and Beckham, Lieutenant Governor, Beckham on February third became entitled to the office of Governor, and had the right to continue the contest to secure what the Constitution guaranteed him, so that if the legislature had not acted until February 19, it had a right then to act on the contest, and its action would be none the less valid because not taken in Goebel's lifetime.

As to the validity of the entries in the Journals and the effect to be given them, the court ruled, citing many authorities,[1] that evidence *aliunde* could not be received to impeach the validity of the record prescribed by the constitution as evidence of the proceedings of the General Assembly, and that the court was without jurisdiction to go behind the record thereby made. Among other things the court said (page 181):

"There is no conflict between the action of the state Canvassing Board and that of the Legislature in these cases. The state Canvassing Board were without power to go behind the returns. They were not authorized to hear evidence and determine who was in truth elected, but were required to give a certificate of election to those who on the face of the returns had received the highest number of votes. For the state Board to have received evidence to impeach the returns before them

[1] Cooley on Const. Lim. (5th ed.) 222; *Wright* v. *Defrees*, 8 Ind. 298; *McCulloch* v. *State*, 11 Ind. 424; *State* v. *Moffitt*, 5 Ohio, 358; *Wise* v. *Bigger*, 79 Va. 269; *Sunbury & Erie Railroad Co.* v. *Cooper*, 33 Pa. St. 278; *Fletcher* v. *Peck*, 6 Cranch, 87; *Ex parte McCardle*, 7 Wall. 506; *United States* v. *Des Moines Co.*, 142 U. S. 510, 544; *United States* v. *Old Settlers*, 148 U. S. 427, 466.

would have been for them, in effect, to act as a Board for trying a contested election, and if they had done this, they would have usurped the power vested in the General Assembly by the constitution; for by its express terms only the General Assembly can determine a contested election for Governor and Lieutenant Governor.

"But the certificate of the State Board of Canvassers is no evidence as to who was in truth elected. Their certificate entitles the recipient to exercise the office until the regular constitutional authority shall determine who is the *de jure* officer. The rights of the *de jure* officer attached when he was elected, although the result was unknown until it was declared by the proper constitutional authority. When it was so declared, it was simply the ascertainment of a fact hitherto in doubt, or unsettled. The rights of the *de facto* officer, under his certificate from the Canvassing Board, were provisional or temporary until the determination of the result of the election as provided in the constitution; and upon that determination, if adverse to him, they ceased altogether. Such a determination of the result of the election, by the proper tribunal, did not take from him any preëxisting right; for, if not in fact elected, he had only a right to act until the result of the election could be determined."

In respect of the allegation that the action of the General Assembly was void because without evidence and arbitrary, the court held that it must be presumed that the Legislature did its duty in the premises; and further that the objections that the notices of contest were insufficient and that the evidence was equally insufficient; that the Contest Boards were not fairly drawn by lot, and that certain members of the Boards were liable to objection on the ground of partiality, were all in respect of matters confided to the General Assembly to deal with as made by the constitution the sole tribunal to determine such contests.

To the argument that if all the specifications of contestants were true, the election was wholly void, and no one elected, the court replied that it had no means of knowing the grounds on which the General Assembly reached its conclusion; that the

presumptions were in favor of their judgment, and that "when they found as a fact that the contestants received the highest number of legal votes cast in the election in controversy, we are not at liberty to go behind their findings."

The court further held that the proceedings were not in violation of the Fourteenth Amendment, and said:

"The office of Governor being created by the constitution of this State, the instrument creating it might properly provide how the officer was to be elected and how the result of this election should be determined. The provisions of the constitution on this subject do not abridge the privileges or immunities of citizens of the United States. Such an office is not property, and in determining merely the result of the election, according to its own laws, the State deprives no one of life, liberty or property. In creating this office, the State had a right to provide such agencies as it saw fit to determine the result of the election, and it had a right to provide such a mode of procedure as it saw fit. It is wholly a matter of state policy. The people of the State might, by an amendment to their constitution, abolish the office altogether. The determination of the result of an election is purely a political question, and if such suits as this may be maintained, the greatest disorder will result in the public business. It has always been the policy of our law to provide a summary process for the settlement of such contests, to the end that public business shall not be interrupted; but if such a suit as this may be maintained, where will such a contest end?"

Of the seven members of the tribunal, Hazelrigg, C. J., Paynter, Hobson and White, JJ., concurred in the principal opinion by Hobson, J.; and Burnam and Guffy, JJ., in the result, in a separate opinion by Burnam, J., on the ground "that there is no power in the courts of the State to review the finding of the General Assembly in a contested election for the offices of Governor and Lieutenant Governor as shown by its duly authenticated records." Du Relle, J., dissented, holding that the Boards of Contest had no jurisdiction in the matter which they undertook to try, and that the demurrer should have been carried back to the petition and sustained.

Statement of the Case.

The present constitution of the State of Kentucky, of 1891, provides, § 90: "Contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law." This was taken verbatim from the twenty-fourth section of article three of the constitution of 1850.

Section 27 of article III of the constitution of 1799 provided: "Contested elections for a Governor and Lieutenant Governor shall be determined by a committee, to be selected from both Houses of the General Assembly, and formed and regulated in such manner as shall be directed by law."

The statutes of Kentucky provide:

"§ 1535. No application to contest the election of an officer shall be heard, unless notice thereof in writing signed by the party contesting, is given.

"1. The notice shall state the grounds of the contest, and none other shall afterward be heard as coming from such party; but the contestee may make defence without giving counter notice.

"2. In the case of an officer elective by the voters of the whole State, or any judicial district, the notice must be given within thirty days after the final action of the Board of Canvassers."

* * * * * * * *

"§ 1596 A, . . .

"8. Contested Election of Governor and Lieutenant Governor. When the election of a Governor or Lieutenant Governor is contested, a Board for determining the contest shall be formed in the manner following:

"First. On the third day after the organization of the General Assembly which meets next after the election, the Senate shall select, by lot, three of its members, and the House of Representatives shall select, by lot, eight of its members, and the eleven so selected shall constitute a Board, seven of whom shall have power to act.

"Second. In making the selection by lot, the name of each member present shall be written on a separate piece of paper, every such piece being as nearly similar to the other as may be.

Each piece shall be rolled up so that the name thereon cannot be seen, nor any particular piece be ascertained or selected by feeling. The whole so prepared shall be placed by the clerk in a box on his table, and after it has been well shaken up and the papers therein well intermixed, the clerk shall draw out one paper, which shall be opened and read aloud by the presiding officer, and so on until the required number is obtained. The persons whose names are so drawn shall be members of the Board.

"Third. The members of the Board so chosen by the two Houses shall be sworn by the Speaker of the House of Representatives to try the contested election, and give true judgment thereon, according to the evidence, unless dissolved before rendering judgment.

"Fourth. The Board shall, within twenty-four hours after its election, meet, appoint its chairman and assign a day for hearing the contest, and adjourn from day to day as its business may require.

"Fifth. If any person so selected shall swear that he cannot, without great personal inconvenience, serve on the Board, or that he feels an undue bias for or against either of the parties, he may be excused by the House from which he was chosen from serving on the Board, and if it appears that the person so selected is related to either party, or is liable to any other proper objection on the score of its partiality, he shall be excused.

"Sixth. Any deficiency in the proper number so created shall be supplied by another draw from the box.

"Seventh. The Board shall have power to send for persons, papers and records, to issue attachments therefor signed by its chairman or clerk, and issue commissions for taking proof.

"Eighth. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the Board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election shall be ordered to fill the vacancy; *Provided*, the first two years of his term shall not have expired. Where another than the person returned shall be found to have received the highest number of legal votes given,

such other shall be adjudged to be the person elected and entitled to the office.

"Ninth. No decision shall be made but by the vote of six members. The decision of the Board shall not be final nor conclusive. Such decision shall be reported to the two Houses of the General Assembly, for the future action of the General Assembly. And the General Assembly shall then determine such contest.

"Tenth. If a new election is required it shall be immediately ordered by proclamation of the Speaker of the House of Representatives to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

"Eleventh. When a new election is ordered or the incumbent adjudged not to be entitled, his powers shall immediately cease, and, if the office is not adjudged to another it shall be deemed to be vacant.

"Twelfth. If any member of the Board wilfully fails to attend its sessions, he shall be reported to the House to which he belongs, and thereupon such House shall, in its discretion, punish him by fine or imprisonment or both.

"Thirteenth. If no decision of the Board is given during the then session of the General Assembly, it shall be dissolved unless by joint resolution of the two Houses, it is empowered to continue longer."

Mr. Helm Bruce and *Mr. W. O. Bradley* for plaintiffs in error. *Mr. James P. Helm* and *Mr. Kennedy Helm* were on the brief.

Mr. Lawrence Maxwell, Jr., and *Mr. Lewis McQuown*, for defendant in error. *Mr. W. S. Pryor* was on their brief.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers, the tenure of their offices,

the manner of their election, and the grounds on which, the tribunals before which, and the mode in which, such elections may be contested, should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.

And where controversies over the election of state officers have reached the state courts in the manner provided by, and been there determined in accordance with, the state constitutions and laws, the cases must necessarily be rare in which the interference of this court can properly be invoked.

In *Boyd* v. *Thayer*, 143 U. S. 135, which was a proceeding *quo warranto*, in which the Supreme Court of Nebraska had held that James E. Boyd had not been for two years preceding his election a citizen of the United States, and hence that under the constitution of the State he was not eligible to the office of Governor, this court took jurisdiction because the conclusion of the state court involved the denial of a right or privilege under the Constitution and laws of the United States, upon which the determination of whether Boyd was a citizen of the United States or not depended, and therefore jurisdiction to review a decision against such right or privilege necessarily existed in this tribunal. *Missouri* v. *Andriano*, 138 U. S. 496. And we said (p. 161): "Each State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen, and the title to offices shall be tried, whether in the judicial courts or otherwise. But when the trial is in the courts, it is a 'case,' and if a defence is interposed under the Constitution or laws of the United States, and is overruled, then, as in any other case decided by the highest court of a State, this court has jurisdiction by writ of error."

So in *Kennard* v. *Louisiana*, 92 U. S. 480, concerning the right of Kennard to the office of associate justice of the Supreme Court of Louisiana, jurisdiction was taken on the ground that the constitutionality of the statute under which the disputed title to office was tried was drawn in question. The court, speaking by Mr. Chief Justice Waite, said: "The question before us is, not whether the courts below, having jurisdiction of the case and the parties, have followed the law, but whether

the law, if followed, would have furnished Kennard the protection guaranteed by the Constitution. Irregularities and mere errors in the proceedings can only be corrected in the state courts. Our authority does not extend beyond an examination of the power of the courts below to proceed at all."

The writ in *Foster* v. *Kansas*, 112 U. S. 201, rested on the same ground.

In each of the foregoing cases, the determination of the right to the offices in dispute was reposed in the judicial courts, and no question was expressly considered by this court as to whether the right to a public office of a State was or was not protected by the Fourteenth Amendment.

In *Wilson* v. *North Carolina*, 169 U. S. 586, 592, the Governor of North Carolina had suspended plaintiff in error as Railroad Commissioner under a statute of that State, and the state Supreme Court had held the action of the Governor a valid exercise of the power conferred upon him, and that it was due process of law within the meaning of the Constitution. A writ of error from this court to review that judgment was granted, and on hearing was dismissed. Mr. Justice Peckham, in delivering the opinion, said: "The controversy relates exclusively to the title to a state office, created by a statute of the State, and to the rights of one who was elected to the office so created. Those rights are to be measured by the statute and by the constitution of the State, excepting in so far as they may be protected by any provision of the Federal Constitution. Authorities are not required to support the general proposition that in the consideration of the constitution or laws of a State this court follow the construction given to those instruments by the highest court of the State. The exceptions to this rule do not embrace the case now before us. We are, therefore, concluded by the decision of the Supreme Court of North Carolina as to the proper construction of the statute itself, and that as construed it does not violate the constitution of the State. The only question for us to review is whether the State, through the action of its Governor and judiciary, has deprived the plaintiff in error of his property without due process of law, or denied to him the equal protection of the laws. We are of opinion

that the plaintiff in error was not deprived of any right guaranteed to him by the Federal Constitution, by reason of the proceedings before the Governor under the statute above mentioned, and resulting in his suspension from office. The procedure was in accordance with the constitution and laws of the State. It was taken under a valid statute creating a state office in a constitutional manner, as the state court has held. What kind and how much of a hearing the officer should have before suspension by the Governor was a matter for the state Legislature to determine, having regard to the constitution of the State. The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does not provide for the carrying out and enforcement of the policy of the State with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally be conclusive here. The facts would have to be most rare and exceptional which would give rise in a case of this nature to a Federal question. . . . In its internal administration the State (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the persons filling the office. And in such matters the decision of the state court, that the procedure by which an officer has been suspended or removed from office was regular and was under a constitutional and valid statute, must generally be conclusive in this court. . . . Upon the case made by the plaintiff in error, the Federal question which he attempts to raise is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law or by denying him the equal protection of the laws."

The grounds on which our jurisdiction is sought to be maintained in the present case are set forth in the errors assigned, to the effect in substance: (1) That the action of the General Assembly in the matter of these contests deprived plaintiffs in

error of their offices without due process of law. (2) That the action of the General Assembly deprived the people of Kentucky of the right to choose their own representatives, secured by the guarantee of the Federal Constitution of a republican form of government to every State; and deprived them of their political liberty without due process of law.

For more than a hundred years the constitution of Kentucky has provided that contested elections for Governor and Lieutenant Governor shall be determined by the General Assembly. In 1799, by a committee, "to be selected from both houses of the General Assembly, and formed and regulated in such manner as shall be directed by law;" since 1850, "by both houses of the General Assembly, according to such regulations as may be established by law."

The highest court of the State has often held and, in the present case has again declared, that under these constitutional provisions the power of the General Assembly to determine the result is exclusive, and that its decision is not open to judicial review. *Batman* v. *Megowan*, 1 Metc. (Ky.) 533; *Stine* v. *Berry*, 96 Ky. 63.[1]

The statute enacted for the purpose of carrying the provisions of the constitution into effect has been in existence in substance since 1799. 1 Morehead and Brown, 593–4; Rev. Stat. Ky. 1852, chap. 32, art. 7, § 1, p. 294. Many of the States have similar constitutional provisions and similar statutes.

We do not understand this statute to be assailed as in any manner obnoxious to constitutional objection, but that plaintiffs in error complain of the action of the General Assembly under the statute, and of the judgment of the state courts declining to disturb that action.

It was earnestly pressed at the bar that all the proceedings were void for want of jurisdiction apparent on the face of the record; that under the constitution and statute, as there was no question of an equal number of votes, or of the legal qualifi-

[1] And see *State* v. *Marlow*, 15 Ohio St. 114, 134; *State* v. *Harmon*, 31 Ohio St. 250; *Commonwealth* v. *Garrigues*, 28 Pa. St. 9; *Commonwealth* v. *Leach*, 44 Pa. St. 332; *Royce* v. *Goodwin*, 22 Mich. 496; *Baxter* v. *Brooks*, 29 Ark. 173; *State* v. *Lewis*, 51 Conn. 113.

cations of the candidates, the action of the General Assembly could only be invoked by a contest as to which of the parties had received the highest number of legal votes, but that the notices put forward a case, not of the election of the contestants, but of no election at all, which the Contest Boards and the General Assembly had no jurisdiction to deal with. The notices were, however, exceedingly broad, and set up a variety of grounds, and specifically stated that the contestants would ask the Boards of Contest and the General Assembly to determine that they were legally and rightfully elected Governor and Lieutenant Governor at the said election and that the contestees were not. And the determination of the Boards and of the General Assembly was that contestants had received the highest number of legal votes cast for any candidate for said offices at said election, and were duly and legally elected Governor and Lieutenant Governor, a determination which adjudged the notices to be sufficient, and which did not include any matter not within the jurisdiction of the tribunal.

We repeat, then, that the contention is that, although the statute furnished due process of law, the General Assembly in administering the statute denied it; and that the Court of Appeals in holding to the rule that where a mode of contesting elections is specifically provided by the constitution or laws of a State, that mode is exclusive, and in holding that as the power to determine was vested in the General Assembly of Kentucky, the decision of that body was not subject to judicial revision, denied a right claimed under the Federal Constitution. The Court of Appeals did, indeed, adjudge that the case did not come within the Fourteenth Amendment, because the right to hold the office of Governor or Lieutenant Governor of Kentucky was not property in itself, and, being created by the state Constitution, was conferred and held solely in accordance with the terms of that instrument and laws passed pursuant thereto, so that, in respect of an elective office, a determination of the result of an election, in the manner provided, adverse to a claimant, could not be regarded as a deprivation forbidden by that amendment.

The view that public office is not property has been generally entertained in this country.

In *Butler* v. *Pennsylvania*, 10 How. 402, 416, Butler and others by virtue of a statute of the State of Pennsylvania had been appointed Canal Commissioners for a term of one year with a compensation of four dollars per diem, but during their incumbency another statute was passed whereby the compensation was reduced to three dollars, and it was claimed that their contract rights were thereby infringed. The court drew a distinction between such a situation and that of a contract by which "perfect rights, certain definite, fixed private rights of property, are vested;" and said: "These are clearly distinguishable from measures or engagements adopted or undertaken by the body politic or state government for the benefit of all, and from the necessity of the case, and according to universal understanding, to be varied or discontinued as the public good shall require. The selection of officers, who are nothing more than agents for the effectuating of such public purposes, is matter of public convenience or necessity, and so too are the periods for the appointment of such agents; and neither the one nor the other of these arrangements can constitute any obligation to continue such agents, or to reappoint them, after the measures which brought them into being shall have been found useless, shall have been fulfilled, or shall have been abrogated as even detrimental to the well-being of the public. . . . It follows, then, upon principle, that, in every perfect or competent government, there must exist a general power to enact and to repeal laws; and to create, and change or discontinue, the agents designated for the execution of those laws. Such a power is indispensable for the preservation of the body politic, and for the safety of the individuals of the community. It is true, that this power, or the extent of its exercise, may be controlled by the higher organic law or constitution of the State, as is the case in some instances in the state constitutions, . . ."

In *Crenshaw* v. *United States*, 134 U. S. 99, 104, Mr. Justice Lamar stated the primary question in the case to be: "Whether an officer appointed for a definite time or during good behavior had any vested interest or contract right in his office of

which Congress could not deprive him." And he said, speaking for the court: "The question is not novel. There seems to be but little difficulty in deciding that there was no such interest or right." *Butler* v. *Pennsylvania, supra; Newton* v. *Commissioners*, 100 U. S. 548; *Blake* v. *United States*, 103 U. S. 227; and many other cases.

The decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such. Nor are the salary and emoluments property, secured by contract, but compensation for services actually rendered. Nor does the fact that a constitution may forbid the legislature from abolishing a public office or diminishing the salary thereof during the term of the incumbent change its character or make it property. True, the restrictions limit the power of the legislature to deal with the office, but even such restrictions may be removed by constitutional amendment. In short, generally speaking, the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right.[1]

The Court of Appeals not only held that the office of Governor or of Lieutenant Governor was not property under the constitution of Kentucky; but moreover, that court was of opinion that the decision of these contested elections did not deprive plaintiffs in error of any preëxisting right.

Our system of elections was unknown to the common law, and the whole subject is regulated by constitutions and statutes passed thereunder. In the view of the Court of Appeals the mode of contesting elections was part of the machinery for ascertaining the result of the election, and hence, the rights of the officer who held the certificate of the State Board of Canvassers "were provisional or temporary until the determination of the result of the election as provided in the constitution,

[1] *Sweeny* v. *Poyntz*, Cir. Ct. U. S. Dist. Ky., not yet reported, Taft, J.; *Standeford* v. *Wingate*, 2 Duvall, (Ky.) 440, 443; *Conner* v. *Mayor*, 5 N. Y. 285; *Donahue* v. *Will County*, 100 Ill. 94; *Attorney General* v. *Jochim*, 99 Mich. 358; *Smith* v. *Mayor*, 37 N. Y. 518; *State* v. *Hawkins*, 44 Ohio St. 98; *State* v. *Davis*, 44 Mo. 129; *State* v. *Duvall*, 26 Wis. 415, 418; *Prince* v. *Skillen*, 71 Maine, 361; *Douglas Co.* v. *Timme*, 32 Neb. 272; *Lynch* v. *Chase*, 55 Kan. 367; *Shelby* v. *Alcorn*, 36 Miss. 273.

and upon that determination, if adverse to him, they ceased altogether." In fact, the statute provided that when the "incumbent was adjudged not to be entitled, his powers shall immediately cease," and under the constitution the holder of the certificate manifestly held it for the time being subject to the issue of a contest if initiated.

It is clear that the judgment of the Court of Appeals in declining to go behind the decision of the tribunal vested by the state constitution and laws, with the ultimate determination of the right to these offices, denied no right secured by the Fourteenth Amendment.

But it is said that the Fourteenth Amendment must be read with section 4 of article IV of the Constitution, providing that: "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened,) against domestic violence." It is argued that when the State of Kentucky entered the Union, the people "surrendered their right of forcible revolution in state affairs," and received in lieu thereof a distinct pledge to the people of the State of the guarantee of a republican form of government, and of protection against invasion, and against domestic violence; that the distinguishing feature of that form of government is the right of the people to choose their own officers for governmental administration; that this was denied by the action of the General Assembly in this instance; and, in effect, that this court has jurisdiction to enforce that guarantee, albeit the judiciary of Kentucky was unable to do so because of the division of the powers of government. And yet the writ before us was granted under § 709 of the Revised Statutes to revise the judgment of the state court on the ground that a consitutional right was decided against by that court.

It was long ago settled that the enforcement of this guarantee belonged to the political department. *Luther* v. *Borden*, 7 How. 1. In that case it was held that the question, which of the two opposing governments of Rhode Island, namely, the charter government or the government established by a volun-

tary convention, was the legitimate one, was a question for the determination of the political department; and when that department had decided, the courts were bound to take notice of the decision and follow it; and also that as the Supreme Court of Rhode Island holding constitutional authority not in dispute, had decided the point, the well settled rule applied that the courts of the United States adopt and follow the decisions of the state courts on question which concern merely the constitution and laws of the State.

We had occasion to refer to *Luther* v. *Borden* in *In re Duncan, Petitioner*, 139 U. S. 449, 461, and we there observed: "Mr. Webster's argument in that case took a wider sweep, and contained a masterly statement of the American system of government, as recognizing that the people are the source of all political power, but that as the exercise of governmental powers immediately by the people themselves is impracticable, they must be exercised by representatives of the people; that the basis of representation is suffrage; that the right of suffrage must be protected and its exercise prescribed by previous law, and the results ascertained by some certain rule; that through its regulated exercise each man's power tells in the constitution of the government and in the enactment of laws; that the people limit themselves in regard to the qualifications of electors and the qualifications of the elected, and to certain forms for the conduct of elections; that our liberty is the liberty secured by the regular action of popular power, taking place and ascertained in accordance with legal and authentic modes; and that the Constitution and laws do not proceed on the ground of revolution or any right of revolution, but on the idea of results achieved by orderly action under the authority of existing governments, proceedings outside of which are not contemplated by our institutions. Webster's Works, vol. 6, p. 217. . . . The State of Texas is in full possession of its faculties as a member of the Union, and its legislative, executive and judicial departments are peacefully operating by the orderly and settled methods prescribed by its fundamental law. Whether certain statutes have or have not binding force, it is for the State to determine, and that deter-

mination in itself involves no infraction of the Constitution of the United States, and raises no Federal question giving the courts of the United States jurisdiction."

These observations are applicable here. The Commonwealth of Kentucky is in full possession of its faculties as a member of the Union, and no exigency has arisen requiring the interference of the General Government to enforce the guarantees of the Constitution, or to repel invasion, or to put down domestic violence. In the eye of the Constitution, the legislative, executive and judicial departments of the State are peacefully operating by the orderly and settled methods prescribed by its fundamental law, notwithstanding there may be difficulties and disturbances arising from the pendency and determination of these contests. This very case shows that this is so, for those who assert that they were aggrieved by the action of the General Assembly, properly accepted the only appropriate remedy, which under the law was within the reach of the parties. That this proved ineffectual as to them, even though their grounds of complaint may have been in fact well founded, was the result of the constitution and laws under which they lived and by which they were bound. Any remedy beside that is to be found in the august tribunal of the people, which is continually sitting, and over whose judgments on the conduct of public functionaries the courts exercise no control.

We must decline to take jurisdiction on the ground of deprivation of rights embraced by the Fourteenth Amendment, without due process of law, or of the violation of the guarantee of a republican form of government by reason of similar deprivation.

As remarked by Chief Justice Taney in *Luther* v. *Borden*: "The high power has been conferred on this court of passing judgment upon the acts of the state sovereignties, and of the legislative and executive branches of the Federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided

to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums."

Writ of error dismissed.

MR. JUSTICE MCKENNA concurred in the result.

MR. JUSTICE BREWER, with whom concurred MR. JUSTICE BROWN, dissenting.

I am unable to concur in all that is said by the Chief Justice in the opinion just announced, and will state briefly wherein I dissent.

An office to which a salary is attached, in a case in which the controversy is only as to which of two parties is entitled thereto, has been adjudged by this court, and rightfully, to be property within the scope of that clause of the Fourteenth Amendment, which forbids a state to "deprive any person of life, liberty or property without due process of law." In *Kennard* v. *Louisiana*, 92 U. S. 480, Kennard was appointed a justice of the Supreme Court of Louisiana. Morgan claimed to be entitled thereto, and brought suit to settle the title to the office. The Supreme Court of the State decided in favor of Morgan, and Kennard sued out a writ of error from this court on the ground that the judgment had deprived him of his office, without due process of law, in violation of the foregoing provision of the Fourteenth Amendment. Of course, neither life nor liberty were involved, and the jurisdiction of this court could be sustained only on the ground that the property of Kennard was taken from him, as alleged, without due process of law. This court unanimously sustained the jurisdiction, but on examination of the proceedings found that there had been due process of law, and therefore affirmed the judgment of the Supreme Court of Louisiana. In *Foster* v. *Kansas*, 112 U. S. 201, the Supreme Court of Kansas had, in *quo warranto* proceedings, ousted Foster from the office of county attorney of Saline County, and there was presented a motion to dismiss as well

as one to affirm. This court unanimously held that the motion to dismiss must be overruled, saying (p. 206):

"As the question of the constitutionality of the statute was directly raised by the defendant, and decided against him by the court, we have jurisdiction, and the motion to dismiss must be overruled."

At the same time it affirmed the decision of the Supreme Court of the State on the ground that the proceedings showed due process of law. In *Boyd* v. *Thayer*, 143 U. S. 135, the Supreme Court of Nebraska had, in an appropriate action, rendered judgment ousting Boyd from the office of governor of the State, and placing Thayer in possession. On error to this court we took jurisdiction of the case, and reversed the judgment of the Supreme Court of Nebraska, thus restoring Boyd to the office from which he had been ousted by the judgment of that court. In that case there was a dissenting opinion by Mr. Justice Field on the ground of jurisdiction, he saying (p. 182):

"I dissent from the judgment just rendered. I do not think that this court has any jurisdiction to determine a disputed question as to the right to the governorship of a State, however that question may be decided by its authorities."

In the late case of *Wilson* v. *North Carolina*, 169 U. S. 586, in which the judgment of the Supreme Court of the State, confirming the action of governor, in suspending a railroad commissioner, was sustained, and the writ of error dismissed, the dismissal was not placed on the ground that the office, with its salary, was not property to be protected by the Fourteenth Amendment, but, as said Mr. Justice Peckham, speaking for the court (p. 595):

"Upon the case made by the plaintiff in error, the Federal question which he attempts to raise is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law, or by denying him the equal protection of the laws."

We have thus, in four cases, coming at successive times through

a period of twenty-five years, had before us the question of the validity of judgments of the highest courts of separate States, taking office from one person and giving it to another, in three of which we unhesitatingly sustained our jurisdiction to review such judgments, two of which we affirmed, on the ground that the proceedings in the state court disclosed due process of law, and that, therefore, the rights of the plaintiff in error were not infringed; in the third of which we held that the proceedings could not be sustained, and reversed the judgment of the state court, ousting one person from the high office of governor of the State and giving it to another; and in the fourth of which, while we dismissed the writ of error, it was not on the ground that there was no property involved, but because the reasons assigned for a review were so frivolous as not to call for consideration. Such a series of decisions should not now be disturbed, except upon very cogent and satisfactory reasons. And this case, it must be borne in mind, is exactly like the others, a proceeding in error to review the judgment of the highest court of a state in an action to remove an incumbent from his office.

Aside from these adjudications, I am clear, as a matter of principle, that an office to which a salary is attached is, as between two contestants for such office, to be considered a matter of property. I agree fully with those decisions which are referred to, and which hold that as between the State and the officeholder there is no contract right either to the term of office or the amount of salary, and that the legislature may, if not restrained by constitutional provisions, abolish the office or reduce the salary. But when the office is not disturbed, when the salary is not changed, and when, under the constitution of the State, neither can be by the legislature, and the question is simply whether one shall be deprived of that office and its salary, and both given to another, a very different question is presented, and in such a case to hold that the incumbent has no property in the office with its accompanying salary does not commend itself to my judgment.

While not concurring in the order of dismissal, I am of opinion that the judgment of the Court of Appeals of Kentucky should be affirmed. The State of Kentucky has provided that

contests in respect to the office of governor and lieutenant governor shall be decided by the General Assembly. Such provision is not uncommon, is appropriate, and reasonable. The contestants, William Goebel and J. C. W. Beckham, filed with the General Assembly within due time their notices of contest. Those notices were broad enough to justify action by the General Assembly, and a decision setting aside the award of the canvassing board and giving to the contestants their offices. The prescribed procedure was followed, the committee authorized by statute was selected, its report made, and upon that a decision awarding to the contestants the offices. It is true that the first decision of the General Assembly was made at a secret session outside its ordinary place of meeting, and without notice except to those who were supposed to be willing to concur in the report of the committee. If that ended the proceedings I should be strongly inclined to hold that the decision thus rendered could not be sustained. For when a tribunal is constituted of several members I understand that all have a right to be present, and if any session is held elsewhere than at the appointed time and place each one must be notified in order that he may have the opportunity of being present, and contributing by his advice and opinion to the final judgment. But the record does not stop with this award of a part of the assembly in secret session, for subsequently, when the General Assembly was in session at its regular place of meeting, in the discharge of its ordinary duties, and at a time prescribed for its meeting, the action taken on February 2 was ratified and confirmed, both in single and joint session. Now, I agree with those members of the Court of Appeals of Kentucky who hold that this final action of the General Assembly is conclusive. I do not ignore the many allegations of wrong, such as that the selection of the committee was not by lot, as prescribed by the laws, but was a trick on the part of the clerks of the assembly, and it must be conceded that the outcome of that drawing lends support to this allegation. Curious results sometimes happen by chance, but when those results happen so largely along the lines of the purposes of those who have control of the supposed chance, it is not strange that outsiders are apt to feel that purpose, and not

chance determined the result. Be all these things as they may, the General Assembly was constituted as the tribunal to conduct and supervise the contest. It approved what took place, and it is familiar law that no question can be raised in the courts as to the honesty or integrity of the members of the legislature in the discharge of their duties. Whatever of purity or honesty may be in fact lacking in the conduct of any one of them is a matter to be inquired into between his constituents and himself, and it is no part of the province of the judiciary to challenge or question the integrity of his action. So we have the case of a committee apparently selected by lot, the propriety of whose action was approved by the tribunal having charge of the controversy, the report of that committee in favor of the contestants, and the judgment of the assembly, not merely at the secret session, but later, when all were present, or were called upon to be present, approving such report. This in my opinion constitutes due process of law within the meaning of the Fourteenth Amendment, and I agree with the Court of Appeals of Kentucky that upon that award thus made by the proper tribunal, no other judgment can be entered than that which sustains it. But because, as I understand the law, this court has jurisdiction to review a judgment of the highest court of a State ousting one from his office, and giving it to another, a right to inquire whether that judgment is right or wrong in respect to any Federal question, such as due process of law, I think the writ of error should not be dismissed, but that the judgment of the Court of Appeals of Kentucky should be affirmed.

MR. JUSTICE HARLAN, dissenting:

At the regular election held in Kentucky on the 7th day of November, 1899, William S. Taylor and William Goebel were, respectively, the Republican and Democratic candidates for Governor of that Commonwealth.

As required by law, the returns of the election were made to the Secretary of State.

Upon examining and canvassing the returns, the officers charged with the duty of ascertaining the result of the election

certified, as to the office of Governor, that Taylor "received the highest number of votes given for that office, as certified to the Secretary of State, and is, therefore, duly and regularly elected for the term prescribed by the Constitution." According to the returns upon which that certificate was based Taylor received 193,714 votes and Goebel 191,331.

It cannot be doubted that the certificate awarded to Taylor established at least his *prima facie* right to the Governorship, and that he could not be deprived of that right except upon a contest in the mode prescribed by law, and upon proof showing that Goebel was legally entitled to the office. To deprive him of that right illegally was an injury both to him and to the people of the State. "The very essence of civil liberty," it was said in *Marbury* v. *Madison*, 1 Cranch, 137, "is the right of every individual to claim the protection of the laws, whenever he receives an injury."

The Constitution of Kentucky provides that the Governor "shall be elected for the term of four years by the qualified voters of the State. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the General Assembly may direct;" and that the Governor "shall at stated times receive for his services a compensation to be fixed by law." Const. Kentucky, §§ 70, 74. That instrument further provides that "contested elections for Governor and Lieutenant Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law." § 90.

Taylor, having received his certificate of election based upon the returns to the Secretary of State, took the oath of office as Governor on December 12, 1899 — the oath being administered by the Chief Justice of the Court of Appeals of Kentucky—and entered at once upon the discharge of his duties, taking possession of the public buildings provided for the Governor, as well as of the books, archives and papers committed by law to the custody of that officer. After that and until he was lawfully ousted, his acts, as Governor, in conformity to law, were binding upon every branch of the state government and upon the people.

Within thirty days after the certificate of election was awarded to Taylor he was served by Goebel with notice of contest for the office of Governor.

By the statutes of Kentucky relating to contested elections for Governor and Lieutenant Governor it is provided:

"When the election of a Governor or Lieutenant Governor is contested a Board for determining the contest shall be formed in the manner following:

"First. On the third day after the organization of the General Assembly, which meets next after the election, the Senate shall select by lot three of its members, and the House of Representatives shall select by lot eight of its members, and the eleven so selected shall constitute a Board, seven of whom shall have power to act.

"Second. In making the selection by lot the name of each member shall be written on a separate piece of paper, every such piece being as nearly similar to the other as may be. Each piece shall be rolled up so that the name thereon cannot be seen, nor any particular piece be ascertained or selected by feeling. The whole so prepared shall be placed by the clerk in a box on his table, and, after it has been well shaken and the papers therein well intermixed, the clerk shall draw out one paper, which shall be opened and read aloud by the presiding officer, and so on until the required number is obtained. The persons whose names are so drawn shall be members of the Board.

"Third. The members of the Board so chosen by the two Houses shall be sworn by the Speaker of the House of Representatives to try the contested election, and give true judgment thereon, according to the evidence, unless dissolved before rendering judgment.

"Fourth. The board shall, within twenty-four hours after its election, meet, appoint its chairman and assign a day for hearing the contest, and adjourn from day to day as its business may require.

"Fifth. If any person so selected shall swear that he cannot, without great personal inconvenience, serve on the Board, or that he feels an undue bias for or against either of the parties,

he may be excused by the House from which he was chosen from serving on the Board, and if it appears that the person so selected is related to either party, or is liable to any other proper objection on the score of his partiality, he shall be excused.

"Sixth. Any deficiency in the proper number so created shall be supplied by another draw from the box.

"Seventh. The Board shall have power to send for persons, papers and records, to issue attachments therefor, signed by its chairman or clerk, and issue commissions for taking proof.

"Eighth. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the Board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election shall be ordered to fill the vacancy: *Provided*, The first two years of his term shall not have expired. Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.

"Ninth. No decision shall be made but by the vote of six members. The decision of the Board shall not be final nor conclusive. Such decision shall be reported to the two Houses of the General Assembly, for the future action of the General Assembly. And the General Assembly shall then determine such contest.

"Tenth. If a new election is required it shall be immediately ordered by proclamation of the Speaker of the House of Representatives, to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

"Eleventh. When a new election is ordered or the incumbent adjudged not to be entitled, his powers shall immediately cease, and, if the office is not adjudged to another, it shall be deemed to be vacant.

"Twelfth. If any member of the Board wilfully fails to attend its sessions, he shall be reported to the House to which he belongs, and thereupon such House shall, in its discretion, punish him by fine and imprisonment, or both.

"Thirteenth. If no decision of the Board is given during the then session of the General Assembly, it shall be dissolved, unless by joint resolution of the two Houses it is empowered to continue longer." Rev. Stat. Kentucky, § 1596 *A*.

It may be here observed that the jurisdiction conferred by the statute upon the Board of Contest appointed by the Legislature is not without limit. The power given to determine contested elections for Governor and Lieutenant Governor is attended by the condition that the determination of the contest shall be according to such regulations as may be established by law. In words too clear to require construction the powers of a Board of Contest are restricted so that (1) if the votes were not accurately summed up, the error might be corrected; (2) if illegal votes were cast they might be thrown out; (3) in the event "the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot"; (4) if the person returned as elected was not legally qualified to receive the office at the election, a new election must be ordered to fill the vacancy; (5) if another than the person returned is found "to have received the highest number of legal votes *given*, such other shall be adjudged to be the person elected and entitled to the office." The statute has been so construed by the highest court of Kentucky in *Leeman* v. *Hinton*, 1 Duvall, 38. That was a common law action involving the title to an office. The defendant relied upon the decision of a Board of Contest to the effect that Leeman's claim to the office rested upon an election held in each precinct under the supervision of military officers who overawed the majority of the voters in the county. The Court of Appeals of Kentucky decided in favor of Leeman, saying: "But the authority to decide as to the freedom and equality of elections has not been conferred by the Legislature upon the Board for trying contested elections, but forms a part of the general jurisdiction of the court." In the previous case of *Newcum* v. *Kirtly*, 13 B. Mon. 522—which was a contested election case in which the Board assumed to count votes *not cast*, but which *would have been cast* if the polls had not been closed too soon—the court said that "the necessary and certain import of

the provision is that the contestant shall not be adjudged to be entitled to the office unless the Board find that he has *received* the highest number of legal votes *given*."

Let it also be observed that the Board of Contest in this case was not given jurisdiction to throw out all the votes cast in a particular city, county or section of the State because, in its judgment, the freedom of the election in such city, county or section was destroyed by military or other interference. In other words, the Board was without jurisdiction to throw out legal votes actually given, and was bound to respect the mandate of the constitution that "the person *having* the highest number of votes *shall be* Governor," as well as the mandate of the statute that the person "found to have *received* the highest number of votes . . . *shall be* adjudged to be the person elected and entitled to the office."

I remark further that the members elected to try the contested election were required by the statute "to give true judgment *according to the evidence*."

As to the Legislature, it was made its duty by express words to determine the contest, without regarding the decision of the Board as final or conclusive. But as already suggested, its jurisdiction to act was not without limit; for, in addition to the restrictions above referred to, by the statute under which it proceeded no application to contest the election of an officer could be heard unless notice thereof in writing, signed by the party contesting, had been given; and "the notice shall state the grounds of the contest, and none other shall afterward be heard as coming from such party, but the contestee may make defence without giving counter notice." Rev. Stat. Kentucky, § 1535. The Board of Contest, as the court below has said, "was only a preliminary agent *to take evidence* and *report* the *facts* to the General Assembly. The Assembly itself finally determined the contest." As the General Assembly could determine the contest only upon the grounds set forth in the contestant's notice, it had no authority or jurisdiction to oust the incumbent unless those grounds or some of them were sustained by proof laid before it. If no proof was laid before it, then the *prima facie* right of the incumbent based upon the certificate awarded to him, must prevail.

MR. JUSTICE HARLAN, dissenting.

With these preliminary observations as to the trial by a Board of Contest of a contested election for Governor, and as to the powers of the Legislature in determining such contest finally as between the parties, I come to the consideration of the grounds upon which the majority of the court have dismissed the present writ of error.

The Board of Contest in their report of January 30, 1900, say: "In our opinion William Goebel was elected Governor of the Commonwealth of Kentucky on the 7th day of November, 1899, and that he then and there received the highest number of legal votes cast for any one for the office of Governor at said election, and we therefore respectfully suggest that this report be approved, and a resolution adopted by the General Assembly declaring the said William Goebel Governor-elect of the Commonwealth of Kentucky for the term commencing the 12th day of December, 1899. We decide that said William Goebel has received the highest number of legal votes, and is adjudged to be the person elected to said office of Governor for the term prescribed by law."

The report was not accompanied either by any abstract of the evidence or any recital of the grounds upon which it based the statement that Goebel had received the highest number of legal votes. Nor was the evidence itself transmitted to the Legislature—not a line nor a word of it. According to the uncontradicted statement made by counsel at the argument, the proof made nearly two thousand pages of typewriting. The report simply followed the words of the statute and stated that Goebel had received "the highest number of legal votes," giving no basis, not the slightest, upon which the Legislature could determine the correctness of that statement.

Immediately after the Board's report reached the body claiming to be the lawful Legislature of the State, that body—of course without reading the evidence, or causing it to be read, for it had no evidence before it—approved the report, and declare Goebel to have been legally elected Governor. Upon that action alone the present suit was based, and by the judgment of the highest court of Kentucky such action was declared to be conclusive upon the judiciary.

MR. JUSTICE HARLAN, dissenting.

The first question to be considered is whether Taylor has been denied by the judgment of the state court any right or privilege secured to him by the Constitution of the United States. The appellant invokes the clause of the Fourteenth Amendment declaring that "no State shall deprive any person of life, liberty or property, without due process of law." There ought not, at this day, to be any doubt as to the objects which were intended to be attained by the requirement of due process of law. "They were intended," this court has said, "to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." *Bank* v. *Okely*, 4 Wheat. 244.

The majority of this court decide that an office held under the authority of a State cannot in any case be deemed property within the meaning of the Fourteenth Amendment, and hence, it is now adjudged, the action of a state Legislature or state tribunal depriving one of a state office—under whatever circumstances or by whatever mode that result is accomplished—cannot be regarded as inconsistent with the Constitution of the United States. Upon that ground the court declines to take jurisdiction of this writ of error. If the court had dismissed the writ or affirmed the judgment upon the ground that there had been no violation of the principles constituting due process of law, its action would not have been followed by the evil results which, I think, must inevitably follow from the decision now rendered.

Let us see whether, in dismissing the writ of error for want of jurisdiction, the majority have not departed from the rulings of this court in former cases. This question, it cannot be doubted, is one of serious moment. But what was said by Chief Justice Marshall, speaking for this court in *Cohens* v. *Virginia*, 6 Wheat. 404, may well be repeated: "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction, if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We may not pass it by because it is doubtful. With whatever

doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction if it is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid; but we cannot avoid them."

The first case in this court relating to this subject is *Kennard* v. *Louisiana*, 92 U. S. 480. That was a writ of error brought by Kennard to review the final judgment of the Supreme Court of Louisiana declaring that he was not a member of that court. "The case," the report states, "was then brought here *upon the ground* that the State of Louisiana acting under the law, through her judiciary, had deprived Kennard of his office without due process of law, in violation of that provision of the Fourteenth Amendment of the Constitution of the United States which prohibits any State from depriving any person of life, liberty or property, without due process of law." Looking also into the printed arguments filed in that case, on behalf of the respective parties, I find that the attorney for the plaintiff in error, a lawyer of distinction, insisted that the *sole* question presented for determination by this court was whether the final judgment of the state court deprived Kennard of his office in violation of the above clause of the Fourteenth Amendment. And this view was not controverted by the attorney for the defendant, also an able lawyer. The latter contended that the Fourteenth Amendment had no application because in what was done no departure from the principles of due process of law had occurred. The opinion of Chief Justice Waite delivering the judgment of this court thus opens: "The sole question presented for our consideration in this case, as stated by the counsel for the plaintiff in error, is, whether the State of Louisiana, acting under the statute of January 15, 1873, through her judiciary, has deprived Kennard of his office without due process of law." Of course, this court had no jurisdiction to inquire whether there had been due process of law in the proceedings in the state court, unless the office in dispute or the right to hold it was property within the meaning of the Fourteenth Amendment, or unless

Kennard's liberty was involved in his holding and discharging the duties of the office to which, as he insisted, he had been lawfully elected. But this court took jurisdiction of the case and affirmed the judgment of the Supreme Court of Louisiana upon the ground that the requirement in the Fourteenth Amendment of due process of law had not been violated. If, in the judgment of this court, as constituted when the *Kennard* case was decided, an office held under the authority of a State was not "property" within the meaning of the Fourteenth Amendment, the case would have been disposed of upon the ground that no Federal right had been or could have been violated, and the court would not have entered upon the inquiry as to what, under the Fourteenth Amendment, constituted due process of law in a case of which—according to the principles this day announced—it had no jurisdiction.

In *Foster* v. *Kansas*, 112 U. S. 201—which was a writ of error to review the final judgment of the Supreme Court of Kansas—the sole issue was as to the right of Foster to hold the office of county attorney. The defendant in error moved to dismiss the writ for want of jurisdiction in this court, and accompanied the motion with a motion to affirm. This court refused to dismiss the case, and referring to *Kennard* v. *Louisiana*, affirmed the judgment upon the ground that there had been, in its opinion, no departure from due process of law in the proceedings to remove Foster. It never occurred to the court, nor to any attorney in the case, that the Fourteenth Amendment did not embrace the case of a state office from which the incumbent was removed without due process of law. If such an office was not deemed property within the meaning of that Amendment, that was an end of the case here. But this court took jurisdiction and disposed of the case upon the ground that the requirement in the Federal Constitution of due process of law had been observed.

In *Boyd* v. *Thayer*, 143 U. S. 135, which came here upon writ of error to review the final judgment of the Supreme Court of Nebraska ousting Boyd from the office of Governor, and putting Thayer into that position, all the Justices, except Mr. Justice Field, concurred in holding that this court had

jurisdiction of the case. In his dissenting opinion Mr. Justice Field observed: "I do not think this court had any jurisdiction to determine a disputed question as to the right to the governorship of a State, however that question may be decided by its authorities." He continued, quoting the language of Mr. Justice Nelson in anotner case: "'The former [General Government] in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment "reserved," are as independent of the General Government as that Government within its sphere is independent of the States. *The Collector* v. *Day*, 11 Wall. 113, 124.' In no respect is this independence of the States more marked, or more essential to their peace and tranquillity, than in their absolute power to prescribe the qualifications of all their state officers, from their chief magistrate to the lowest official employed in the administration of their local government; to determine the matter of their election, whether by open or secret ballot, and whether by local bodies or by general suffrage; the tenure by which they shall hold their respective offices; the grounds on which their election may be contested, the tribunals before which such contest shall be made, the manner in which it shall be conducted; and the effect to be given to the decision rendered. With none of these things can the Government of the United States interfere. In all these particulars the States, to use the language of Mr. Justice Nelson, are as independent of the General Government as that Government within its sphere is independent of the States. Its power of interference with the administration of the affairs of the State and the officers through whom they are conducted extends only so far as may be necessary to secure to it a republican form of government, and protect it against invasion, and also against domestic violence on the application of its legislature, or of its executive when that body cannot be convened. Const. Art. IV, sec. 4. Except as required for these purposes, it can no more interfere with the qualifications, election and installation of the state officers than a foreign government. And all attempts at interference with them in those respects by the executive, legislative or judicial departments of the General Government are in my

judgment so many invasions upon the reserved rights of the States and assaults upon their constitutional autonomy. No clause of the Constitution can be named which in any respect gives countenance to such invasion. The fact that one of the qualifications prescribed by the State for its officers can only be ascertained and established by considering the provisions of a law of the United States in no respect authorizes an interference by the General Government with the state action."

This court had a different view of these questions, and, taking jurisdiction, considered the merits of the case, so far as it involved Federal questions, and rendered a judgment which, by its necessary operation, put into the office of Governor of Nebraska one whom the highest court of that State had adjudged not to be the lawful incumbent.

The latest case involving the present question is *Wilson* v. *North Carolina*, 169 U. S. 586. That was an action in the nature of *quo warranto* to test the title to a state office. Judgment was rendered for the plaintiff. The defendant claimed that the state statute and the action taken under it not only deprived him of his office without due process of law, but denied to him the equal protection of the laws, both in violation of the Fourteenth Amendment. In this court a motion to dismiss the writ of error was sustained upon the ground that, looking at what occurred in the state court, there was "no fair color for claiming that his (the plaintiff's) rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law or by denying him the equal protection of the laws." After observing that this court would be very reluctant to decide that we had jurisdiction in the case presented and could supervise and review the political administration of a state government by its own officials and through its own courts, great care was taken to say: "The jurisdiction of this court would only exist in case there had been, by reason of the statute and the proceedings under it, such a plain and substantial departure from the fundamental principles upon which our Government is based that it could with truth and propriety be said that if the judgment were suffered to remain, the party aggrieved would be deprived of

his life, liberty or property in violation of the provisions of the Federal Constitution." Here, as I think, is a distinct declaration that this court has jurisdiction to review the final judgment of a state court, involving the title to a state office, where there has been a plain and substantial departure from the principles that underlie the requirement of due process of law. The opinion in *Wilson* v. *North Carolina* shows a deliberate consideration of the scope of the Fourteenth Amendment, and a refusal to hold, as is now held, that a contest about a state office could not, under any circumstances, involve rights secured by that Amendment. We there substantially declared that the constitutional requirement of due process of law could be enforced by this court where, in depriving a party of a state office, there had been a plain and substantial departure from the fundamental principles upon which our Government is based.

It thus appears that in four cases, heretofore decided, this court has proceeded upon the ground that to deprive one without due process of law of an office created under the laws of a State, presented a case under the Fourteenth Amendment to the Constitution of the United States of which we could take cognizance and inquire whether there had been due process of law.

Nothing to the contrary was decided in the *Sawyer* case, 124 U. S. 8. That case contains no suggestion that an office is not property. The only point there in judgment was that a court of equity could not control the appointment or removal of public officers. The court said: "The reasons which preclude a court of equity from interfering with the appointment or removal of public officers of the government from which the court derives its authority apply with increased force when the court is a court of the United States and the officers in question are officers of a State." But care was taken further to say: "If a person claiming to be such officer is, by the judgment of a court of the State, either in appellate proceedings, or upon a mandamus or *quo warranto*, denied any right secured to him by the Constitution of the United States, he can obtain relief by a writ of error from this court." So that the *Sawyer* case directly supports the proposition that the judg-

ment of the highest court of a State depriving one of a state office may be reëxamined here, if the incumbent has specially claimed that he has been deprived of it without due process of law. That the point adjudged in *Sawyer's* case was as I have stated is seen from the opinion in *White* v. *Berry*, 171 U. S. 199, in which it was said: "But the court in its opinion in that case observed that under the Constitution and laws of the United States the distinction between law and equity, as existing in England at the time of the separation of the two countries, had been maintained although both jurisdictions were in the same courts, and held that a court of equity had no jurisdiction over the appointment and removal of public officers, and that to sustain a bill in equity to restrain or relieve against proceedings for the removal of public officers would invade the domain of the courts of common law, or of the executive and administrative departments of the Government."

Notwithstanding the above adjudications, the decision to-day is that this court has no jurisdiction, under any circumstances, to inquire whether a citizen has been deprived, without due process of law, of an office held by him under the constitution and laws of his State. If the contest between the one holding the office and the person seeking to hold it is determinable by the Legislature in a prescribed mode, this court, it appears, cannot inquire whether that mode was pursued nor interfere for the protection of the incumbent, even where the final action of the Legislature was confessedly capricious and arbitrary, inconsistent with the fundamental doctrines upon which our Government is based and the recognized principles that belong to due process of law, and not resting, in any degree, on evidence. If the Kentucky Legislature had wholly disregarded the mode prescribed by the statutes of that Commonwealth, and without appointing a Board of Contest composed of its own members, had, by joint resolution simply—without any evidence whatever or without notice to Taylor and without giving him an opportunity to be heard—declared Goebel to be Governor, this court, as we are informed by the decision just rendered, would be without jurisdiction to protect the incum-

bent, for the reason, as is now adjudged, that the office in dispute is not "property" within the meaning of the Fourteenth Amendment. So that while we may inquire whether a citizen's land, worth a hundred dollars, or his mules, have been taken from him by the legislative or judicial authorities of his State without due process of law, we may not inquire whether the legislative or judicial authorities of a State have, without due process of law, ousted one lawfully elected and holding the office of Governor for a fixed term, with a salary payable at stated times, and put into his place one whom the people had said should not exercise the authority appertaining to that high position. It was long ago adjudged by the Court of Appeals of Kentucky that an office was "a valuable right and interest." *Page* v. *Hardin*, 8 B. Mon. 672. In *Commonwealth* v. *Jones*, 10 Bush, 735, the same court, referring to the provision in the constitution of Kentucky depriving any person who fought a duel of the right to hold an office, said: "It, in effect, dispossesses him of a right which the Supreme Court of the United States terms inalienable (4 Wall. 321), takes from him rights, privileges and immunities to which he was theretofore entitled, and strips him of one of the most valuable attributes of citizenship. The word 'deprived' is used in this section in the same sense in which it is used in section 12 of the Bill of Rights and in the Fifth Article of Amendment to the Federal Constitution."

When the Fourteenth Amendment forbade any State from depriving any person of life, liberty or property without due process of law, I had supposed that the intention of the People of the United States was to prevent the deprivation of any legal right in violation of the fundamental guarantees inhering in due process of law. The prohibitions of that amendment, as we have often said, apply to all the instrumentalities of the State, to its legislative, executive and judicial authorities; and therefore it has become a settled doctrine in the constitutional jurisprudence of this country that "whoever by virtue of public position under a state government deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the con-

stitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or, as we have often said, the constitutional prohibition has no meaning, and the State has clothed one of its agents with power to annul or evade it." *Ex parte Virginia*, 100 U. S. 339; *Chicago, Burlington &c. Railroad* v. *Chicago*, 166 U. S. 226; *Scott* v. *McNeal*, 154 U. S. 34. Alluding to a contention that the party—a railroad company—which invoked the Fourteenth Amendment for the protection of its property, had the benefit of due process of law in the proceedings against it, because it had due notice of those proceedings and was admitted to appear and make defence, this court has also said: "But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in its courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance and not to form." *Chicago, Burlington &c. Railroad* v. *Chicago*, above cited. Again, in another case: "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and unequal hand . . . it is still within the prohibition of the Constitution." *Yick Wo* v. *Hopkins*, 118 U. S. 373. See also *Henderson* v. *Mayor*, 92 U. S. 259; *Chy Lung* v. *Freeman*, 92 U. S. 275; *Neal* v. *Delaware*, 103 U. S. 370; *Soon* v. *Crowley*, 113 U. S. 703.

It is said that the courts cannot, in any case, go behind the final action of the legislature to ascertain whether that which was done was consistent with rights claimed under the Federal Constitution. If this be true then it is in the power of the state legislature to override the supreme law of the land. As long ago as *Davidson* v. *United States*, 96 U. S. 97, 102, this court, speaking by Mr. Justice Miller, said: "Can a State make anything due process of law which, by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the States is of no avail, or has no application

where the invasion of private rights is effected under the forms of state legislation." More recently we have said: "The idea that any legislature, state or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. The function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land." *Smyth* v. *Ames*, 169 U. S. 466.

I had supposed that the principles announced in the cases above cited were firmly established in the jurisprudence of this court, and that, if applied, they would serve to protect every right that could be brought within judicial cognizance against deprivation in violation of due process of law.

It seems however—if I do not misapprehend the scope of the decision now rendered—that under our system of government the right of a person to exercise a state office to which he has been lawfully chosen by popular vote may, so far as the Constitution of the United States is concerned, be taken from him by the arbitrary action of a state legislature, in utter disregard of the principle that Anglo-Saxon freemen have for centuries deemed to be essential in the requirement of due process of law—a principle reaffirmed in the Kentucky Bill of Rights, which declares that "absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a Republic, not even in the largest majority." § 2. I cannot assent to the interpretation now given to the Fourteenth Amendment.

Let us look at the question from another standpoint. The requirement of due process of law is applicable to the United States as well as to the States; for the Fifth Amendment—which all agree is a limitation on the authority of Federal agen-

cies—declares that "no person shall . . . be deprived of life, liberty or property without due process of law." If Congress by some enactment should attempt in violation of due process of law, to deprive one of an office held by him under the United States, will not the decision this day rendered compel this court to declare that such office is not property within the meaning of the Fifth Amendment, and therefore the incumbent would be without remedy unless he could invoke the protection of some other clause of the Constitution than the one in the Amendment relating to due process of law? Or, would the court hold that while a Federal office is property within the meaning of the clause in the Fifth Amendment declaring that "no person shall . . . be deprived of life, liberty or property without due process of law," a state office is not property within the meaning of the clause in the Fourteenth Amendment declaring, "nor shall any State deprive any person of life, liberty or property without due process of law?" Can it be that Congress may not deprive one of a Federal office without due process of law, but that a State may deprive one of a state office without due process of law?

I stand by the former rulings of this court in the cases above cited. I am of opinion that, equally with tangible property that may be bought and sold in the market, an office—certainly one established by the constitution of a State, to which office a salary is attached, and which cannot be abolished at the will of the legislature—is, in the highest sense, property of which the incumbent cannot be deprived arbitrarily in disregard of due process of law; that is, as this court said in *Kennard* v. *Louisiana*, in disregard of the "rules and forms which have been established for the protection of private rights." Apart from every other consideration, the right to receive and enjoy the salary attached to such an office is a right of property. And a right of property should be deemed property, unless we mean to play with words, and regard form rather than substance.

I go farther. The liberty of which the Fourteenth Amendment forbids a State from depriving any one without due process of law is something more than freedom from the enslavement of the body or from physical restraint. In my judgment the

words "life, liberty or property" in the Fourteenth Amendment should be interpreted as embracing every right that may be brought within judicial cognizance, and therefore no right of that kind can be taken in violation of "due process of law."

In *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, this court unanimously held that the liberty mentioned in the Fourteenth Amendment "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Judge Cooley, speaking for the Supreme Court of Michigan in *People* v. *Hurlburt*, 24 Mich. 44, after observing that some things were too plain to be written, said: "Mr. Justice Story has well shown that constitutional freedom means something more than liberty permitted; it consists in the civil and political rights which are absolutely guaranteed, assured and guarded; in one's liberties as a man and a citizen—his right to vote, *his right to hold office*, his right to worship God according to the dictates of his conscience, his equality with all others who are his fellow citizens; all these guarded and protected and not held at the mercy and discretion of any one man or any popular majority. Story, Miscellaneous Writings, 620. If these are not now the absolute rights of the people of Michigan, they may be allowed more liberty of action and more privileges, but they are little nearer to constitutional freedom than Europe was when an imperial city sent out consuls to govern it."

The doctrine that liberty means something more than freedom from physical restraint is well illustrated in *Minor* v. *Happersett*, 21 Wall. 162, in which it was said that although the right of suffrage comes from the State, yet when granted it will be protected, and he "who has it can only be deprived of it by due process of law."

What more directly involves the liberty of the citizen than

to be able to enter upon the discharge of the duties of an office to which he has been lawfully elected by his fellow citizens? What more certainly infringes upon his liberty than for the Legislature of the State, by merely arbitrary action, in violation of the rules and forms required by due process of law, to take from him the right to discharge the public duties imposed upon him by his fellow citizens in accordance with law? Can it be that the right to pursue a lawful calling is a part of one's liberty secured by the Fourteenth Amendment against illegal deprivation; and yet the right to exercise an office to which one has been elected and into which he has been lawfully inducted is no part of the incumbent's liberty, and may be disregarded by the mere edict of a legislative body, sitting under a constitution which declares that absolute, arbitrary power exists nowhere in a republic? Can it be that the right to vote, once given, cannot under the Fourteenth Amendment be taken away except by due process of law — and it was so decided in *Minor* v. *Happersett*, above cited — and yet that the right of the person voted for to hold and exercise the functions of the office to which he was elected can, without violating that Amendment, be taken away without due process of law? Does the liberty of an American embrace his right to vote without discrimination against him on account of race, color or previous condition of servitude, and yet not embrace his right to serve in a position of public trust to which he has been lawfully called by his fellow citizens who voted for him? The liberty of which I am speaking is that which exists, and which can exist, only under a republican form of government. "The United States," the supreme law of the land declares, "shall guarantee to every State in the Union a republican form of government." And "the distinguishing feature of that form," this court has said, "is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative powers reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *Duncan* v. *McFall*, 139 U. S. 461. But of what value is that right if the person selected by the people at the polls for an office provided for by the constitution, and holding a certificate

of election, may be deprived of that office by the arbitrary action of the Legislature proceeding altogether without evidence?

I grant that it is competent for a State to provide for the determination of contested election cases by the Legislature. All that I now seek to maintain is the proposition that when a state legislature deals with a matter within its jurisdiction, and which involves the life, liberty or property of the citizen, it cannot ignore the requirement of due process of law. What due process of law may require in particular cases may not be applicable in other cases. The essential principle is that the State shall not by any of its agencies destroy or impair any right appertaining to life, liberty or property in violation of the principles upon which the requirement of due process of law rests. That requirement is "a restraint on the legislative as well as on the executive and judicial powers of the government." *Murray* v. *Land & Imp. Co.*, 18 How. 272, 276; *Scott* v. *McNeal*, above cited; *Chicago, Burlington &c. Railroad* v. *Chicago*, above cited. "That government can scarcely be deemed free," this court has said, "where the rights of property are left solely dependent upon the will of a legislative body without restraint." *Wilkinson* v. *Leland*, 2 Pet. 627.

It is to be regretted that it should be deemed necessary in a case like this to depart from the principles heretofore announced and acted upon by this court.

Looking into the record before us, I find such action taken by the body claiming to be organized as the lawful Legislature of Kentucky as was discreditable in the last degree and unworthy of the free people whom it professed to represent. The statute required the Board of Contest to give "true judgment" on the case, "according to the evidence." And when the statute further declared that the decision of the Board should be reported to the two Houses "for the future action of the General Assembly," that such decision should not be "final and conclusive," and that the General Assembly should determine the contest, it meant, of course, that such determination should rest upon the issues made by the parties and upon the evidence adduced before the Board of Contest. If the evidence had been before the Legislature it would have been physically im-

possible to have examined it; for, as we have seen, its final action was taken immediately after the Board of Contest had reported its decision. But, as heretofore stated, the evidence, before the Board was not transmitted to the Legislature, nor were the grounds upon which the Board proceeded disclosed. Yet the body which assumed to determine who had been elected Governor, without having before it one particle of the proof taken upon the issues made by the notice of contest, "adjudged" that Goebel had been legally elected Governor of Kentucky. No such farce under the guise of formal proceedings was ever enacted in the presence of a free people who take pride in the fact that our American Governments are governments of laws and not of men. That which was done was not equivalent to a decision or judgment or determination by the Legislature of a matter committed to it by law. It should be regarded merely as an exercise of arbitrary power by a given number of men who defied the law. It is not a pleasant thing to say—but after a thorough examination of the record a sense of duty constrains me to say—that the declaration by that body of men that Goebel was legally elected ought not to be respected in any court as a determination of the question in issue, but should be regarded only as action taken outside of law, in utter contempt of the constitutional rights of freemen to select their rulers. They had no *jurisdiction* to *determine* the contest for Governor *except upon the evidence introduced before the Board of Contest*, and in the absence of such evidence they were without authority to declare anything except that Taylor's right to the office of Governor, based upon the certificate awarded him, had not been impaired. Their determination of the contest without having the evidence before them, could have no greater effect in law than if the issue had been determined simply by a joint resolution, without taking proof or without notifying or hearing the parties interested.

It is to be also said that a fair interpretation of the record leads irresistibly to the conclusion that the body of men referred to were wholly indifferent as to the nature of the evidence adduced before the Board of Contest, and that there was a fixed purpose on their part, whatever the facts might be, to

put Goebel into office and to oust Taylor. Under the evidence in the case no result favorable to Goebel could have been reached on any ground upon which the Board of Contest or the Legislature had jurisdiction to act. The Constitution of Kentucky, as we have seen, declares that "the person *having* the highest number of votes shall be Governor." And the statute provides that the person returned having *received* the highest number of legal votes given "shall be adjudged to be the person elected and entitled to the office." With the constitution and the statutes of the State before him when preparing his notice to Taylor of contest, Goebel it is true did claim in very general terms that he was legally and rightfully elected; but he took care not to say—there is reason to believe that he purposely avoided saying—that he had *received* the highest number of legal votes cast for Governor. The evidence renders it clear that the declaration that he had received the highest number of legal votes cast was in total disregard of the facts—a declaration as extravagant as one adjudging that white was black, or that black was white. But such a declaration made by the body to which the Board of Contest reported should not surprise any one when it is remembered that it came from those who did not have before them any of the proofs taken in the case and were willing to act without proof. Those who composed that body seemed to have shut their eyes against the proof for fear that it would compel them to respect the popular will as expressed at the polls. Indignant, as naturally they were and should have been, at the assassination of their leader, they proceeded in defiance of all the forms of law, and in contempt of the principles upon which free governments rest, to avenge that terrible crime by committing another crime, namely, the destruction by arbitrary methods, of the right of the people to choose their Chief Magistrate. The former crime, if the offender be discovered, can be punished as directed by law. The latter should not be rewarded by a declaration of the inability of the judiciary to protect public and private rights, and thereby the rights of voters, against the wilful, arbitrary action of a legislative tribunal which, we must assume from the record, deliberately acted upon a contested election case involving the rights

of the people and of their chosen representative in the office of Governor without looking into the evidence upon which alone any lawful determination of the case could be made. The assassination of an individual demands the severest punishment which it is competent for human laws in a free land to prescribe. But the overturning of the public will, as expressed at the ballot box, without evidence or against evidence, in order to accomplish partisan ends, is a crime against free government, and deserves the execration of all lovers of liberty. Judge Burnam, speaking for himself and Judge Guffy in the Court of Appeals of Kentucky, although compelled, in his view of the law, to hold the action of the Legislature to be conclusive, said: "It is hard to imagine a more flagrant and partisan disregard of the modes of procedure which should govern a judicial tribunal in the determination of a great and important issue than is made manifest by the facts alleged and relied on by the contestees, and admitted by the demurrer filed in the action to be true, and I am firmly convinced, both from these admitted facts and from knowledge of the current history of these transactions, that the General Assembly, in the heat of anger, engendered by the intense partisan excitement which was at the time prevailing, have done two faithful, conscientious and able public servants an irreparable injury in depriving them of the offices to which they were elected by the people of this Commonwealth, and a still greater wrong has been done a large majority of the electors of this Commonwealth, who voted under difficult circumstances to elect these gentlemen to act as their servants in the discharge of the duties of these great offices." I cannot believe that the judiciary is helpless in the presence of such a crime. The person elected, as well as the people who elected him, have rights that the courts may protect. To say that in such an emergency the judiciary cannot interfere is to subordinate right to mere power, and to recognize the Legislature of a State as above the supreme law of the land. The constitution of Kentucky expressly forbids the exercise of absolute and arbitrary power over the lives, liberty or property of freemen. And that principle is at the very foundation of the Government of the Union. Indeed, to sustain that principle our

fathers waged the war for independence and established the Constitution of the United States. Yet by the decision this day rendered, no redress can be had in the courts when a legislative body, or one recognized as such by the courts, without due process of law, by the exercise of absolute, arbitrary power, and without evidence, takes an office having a fixed salary attached thereto from one who has been lawfully elected to such office by the voters of the State at a regular election. The doctrine of legislative absolutism is foreign to free government as it exists in this country. The cornerstone of our republican institutions is the principle that the powers of government shall, in all vital particulars, be distributed among three separate coordinate departments, legislative, executive and judicial. And liberty regulated by law cannot be permanently secured against the assaults of power or the tyranny of a majority, if the judiciary must be silent when rights existing independently of human sanction, or acquired under the law, are at the mercy of legislative action taken in violation of due process of law.

Other grounds are disclosed by the record which support the general proposition that the declaration by the body referred to that Goebel received the highest number of legal votes cast and was entitled to the office of Governor ought not to be regarded as valid, much less conclusive, upon the courts. But as those grounds have not been discussed by this court, and as it declines to determine the case upon the merits as disclosed by the evidence, I will not extend this opinion by commenting on them.

What has been said in this opinion as to the contest for Governor applies to the contest for Lieutenant Governor.

I am of opinion that the writ of error should not have been dismissed, and that the court should have adjudged that the decree below took from Taylor and Marshall rights protected by the Fourteenth Amendment of the Constitution of the United States.

TAYLOR AND MARSHALL *v.* BECKHAM (No. 2).

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

No. 604. Argued April 30, May 1, 1900. — Decided May 21, 1900.

It results from the conclusions announced in No. 603, *ante*, 548, that the writ of error in this case must be dismissed.

THE facts affecting this case are stated in *Taylor and Marshall* v. *Beckham* (*No* 1), *ante*, 548. It was argued with that case, and by the same counsel.

MR. CHIEF JUSTICE FULLER: These were suits in equity brought by Taylor and Marshall against Beckham, and one Carter, asserting himself to be the president *pro tempore* of the Senate of Kentucky, with the right to preside over that body though Marshall was present, in which complainants prayed for injunctions restraining defendants from interfering with complainants in their offices. These suits were heard with the case of *Beckham* v. *Taylor and Marshall*, just decided. When the Circuit Court of Jefferson County reached the conclusion that Beckham was entitled to the office of Governor and entered judgment of ouster, it dismissed the suits. From the decrees appeals were taken to the Court of Appeals of Kentucky, where they were affirmed, and thereafter a writ of error from this court was allowed.

It results from the conclusions announced in the preceding case that the writ of error must be dismissed, and it is so ordered.

MR. JUSTICE MCKENNA concurred in the result.

MR. JUSTICE BREWER and MR. JUSTICE BROWN concurred in a dissent for reasons stated in their dissent to *Taylor & Marshall* v. *Beckham* (*No.* 1), *ante*, 548.

MR. JUSTICE HARLAN dissented for reasons stated in his dissent to *Taylor & Marshall* v. *Beckham* (*No.* 1), *ante*, 548.